

MONTANA LEGISLATIVE HISTORY

Chapter 468 1997Bill H _____ S 382Original bill & history X CH. Committee on JUDICIARYHearing Date(s) 3/25 X CEXEC. ACTION 3/27 X C
(tabled) _____ C

_____ C

Date Out _____ C

S. Committee on JUDICIARYHearing Date(s) 2/21 X C

EXEC. ACTION _____ C

_____ C

_____ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

SB 379 INTRODUCED BY LYNCH, ET AL. LC1265 DRAFTER: BOHYER

REVISE CONSUMER LOAN LAWS

2/18	INTRODUCED		
2/18	FIRST READING		
2/18	REFERRED TO BUSINESS & INDUSTRY		
2/21	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	2ND READING PASSED	50	0
2/25	3RD READING PASSED	50	0
TRANSMITTED TO HOUSE			
3/03	FIRST READING		
3/03	REFERRED TO BUSINESS & LABOR		
3/27	HEARING		
3/27	HEARING		
4/03	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED	92	7
4/05	3RD READING CONCURRED	90	10
RETURNED TO SENATE WITH AMENDMENTS			
4/09	2ND READING AMENDMENTS CONCURRED	50	0
4/10	3RD READING CONCURRED AS AMENDED	50	0
4/15	SIGNED BY PRESIDENT		
4/16	SIGNED BY SPEAKER		
4/16	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 374		
	EFFECTIVE DATE: 10/01/97		

SB 380 INTRODUCED BY DEVLIN, ET AL. LC1303 DRAFTER: BOHYER

PROHIBIT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM CHARGING A LESSEE OF CERTAIN STATE LAND A FEE FOR EXERCISING THE LESSEE'S LEASE RENEWAL PREFERENCE RIGHT

2/18	INTRODUCED		
2/18	FIRST READING		
2/18	REFERRED TO NATURAL RESOURCES		
2/18	FISCAL NOTE REQUESTED		
2/20	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
2/21	HEARING		
2/22	TABLED IN COMMITTEE		
4/05	MISSED DEADLINE FOR 71ST DAY TRANSMITTAL		
	DIED IN COMMITTEE		

SB 381 INTRODUCED BY BENEDICT, ET AL. LC1103 DRAFTER: CAMPBELL

EXCLUDE THE APPLICABILITY OF MANDATED INSURANCE BENEFIT PROVISIONS AND FREEDOM OF CHOICE OF PRACTITIONER PROVISIONS FROM GROUP AND INDIVIDUAL UNIFORM HEALTH BENEFIT PLANS

2/18	INTRODUCED		
2/18	FIRST READING		
2/18	REFERRED TO BUSINESS & INDUSTRY		
2/20	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED		
2/24	2ND READING PASSED	40	9
2/25	3RD READING PASSED	41	9

TRANSMITTED TO HOUSE			
3/03	FIRST READING		
3/03	REFERRED TO HUMAN SERVICES & AGING		
3/10	HEARING		
3/26	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED	97	3
4/05	3RD READING CONCURRED	95	5
RETURNED TO SENATE WITH AMENDMENTS			
4/09	2ND READING AMENDMENTS NOT CONCURRED	49	1
4/10	CONFERENCE COMMITTEE APPOINTED		
4/15	HEARING		
4/16	CONFERENCE COMMITTEE REPORT MAJORITY REPORT #1		
4/16	CONFERENCE COMMITTEE REPORT MINORITY REPORT #1		
4/17	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	32	17
4/18	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	33	16
HOUSE			
4/11	CONFERENCE COMMITTEE APPOINTED		
4/16	CONFERENCE COMMITTEE REPORT MAJORITY REPORT #1		
4/16	CONFERENCE COMMITTEE REPORT MINORITY REPORT #1		
4/17	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	57	43
4/18	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 REJECTED	47	52
4/18	RECONSIDERED PREVIOUS ACTION	56	43
4/18	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	58	41
4/24	SIGNED BY PRESIDENT		
4/24	SIGNED BY SPEAKER		
4/24	TRANSMITTED TO GOVERNOR		
5/02	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 504		
	EFFECTIVE DATE: 05/02/97		

SB 382 INTRODUCED BY HARP LC1348 DRAFTER: CAMPBELL

REVISE PRIVATE SECURITIES LITIGATION LAWS

2/18	INTRODUCED		
2/18	FIRST READING		
2/18	REFERRED TO JUDICIARY		
2/21	HEARING		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED AS AMENDED	32	18
2/26	3RD READING PASSED	32	18
TRANSMITTED TO HOUSE			
3/03	FIRST READING		
3/03	REFERRED TO JUDICIARY		
3/25	HEARING		
3/27	TABLED IN COMMITTEE		
4/08	TAKEN FROM COMMITTEE AND PLACED ON 2ND READING	60	38
4/15	2ND READING CONCURRED	51	49
4/16	3RD READING CONCURRED	51	49
RETURNED TO SENATE			
4/18	SIGNED BY PRESIDENT		
4/20	SIGNED BY SPEAKER		
4/21	TRANSMITTED TO GOVERNOR		

5/01 SIGNED BY GOVERNOR
CHAPTER NUMBER 468
EFFECTIVE DATE: 05/01/97

SB 383 INTRODUCED BY CRIPPEN *LC0917 DRAFTER: LANE*
CREATE THE MONTANA STREET TERRORISM ENFORCEMENT AND
PREVENTION ACT

2/18 INTRODUCED
2/18 REFERRED TO JUDICIARY
2/19 FIRST READING
2/21 HEARING
2/22 COMMITTEE REPORT—BILL PASSED AS AMENDED
2/25 2ND READING PASSED 50 0
2/26 3RD READING PASSED 49 0

TRANSMITTED TO HOUSE
3/03 FIRST READING
3/03 REFERRED TO JUDICIARY
3/18 FISCAL NOTE REQUESTED
3/21 HEARING
3/22 FISCAL NOTE RECEIVED
3/22 FISCAL NOTE PRINTED
3/27 COMMITTEE REPORT—BILL CONCURRED
4/04 2ND READING CONCURRED 82 18
4/05 3RD READING CONCURRED 81 18

RETURNED TO SENATE
4/10 SIGNED BY PRESIDENT
4/10 SIGNED BY SPEAKER
4/11 TRANSMITTED TO GOVERNOR
4/16 SIGNED BY GOVERNOR
CHAPTER NUMBER 285
EFFECTIVE DATE: 04/16/97

SB 384 INTRODUCED BY EMERSON, ET AL. *LC1279 DRAFTER: NISS*
PROHIBIT CONTRIBUTIONS FROM LABOR UNIONS FROM BEING USED TO
SUPPORT OR OPPOSE CANDIDATES, BALLOT MEASURES, OR
POLITICAL COMMITTEES IN THE SAME MANNER AND TO THE SAME
EXTENT AS CONTRIBUTIONS FROM CORPORATIONS ARE PROHIBITED
FROM BEING USED FOR THOSE PURPOSES

2/19 INTRODUCED
2/19 FIRST READING
2/19 REFERRED TO STATE ADMINISTRATION
2/19 FISCAL NOTE REQUESTED
2/20 FISCAL NOTE RECEIVED
2/20 FISCAL NOTE PRINTED
2/21 HEARING
2/24 COMMITTEE REPORT—BILL PASSED AS AMENDED
2/25 2ND READING DO PASS AS AMENDED MOTION FAILED 18 32

SB 385 INTRODUCED BY STANG *LC1283 DRAFTER: NISS*
PROVIDE FOR THE FILING BY A MOTHER OF A CLAIM OF PATERNITY OR
NOTICE OF INTENT TO SEEK SOLE CUSTODY

2/19 FISCAL NOTE REQUESTED
2/19 INTRODUCED
2/19 FIRST READING
2/19 REFERRED TO JUDICIARY
2/21 HEARING
2/21 TABLED IN COMMITTEE

2/24 FISCAL NOTE RECEIVED
2/24 FISCAL NOTE PRINTED
3/03 MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
DIED IN COMMITTEE

SB 386 INTRODUCED BY GAGE *LC1289 DRAFTER: MARTIN*
CLARIFY THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION
TAXES TO CONFORM WITH THE NEW OIL AND NATURAL GAS TAX LAWS
ENACTED DURING THE 1995 LEGISLATIVE SESSION

2/24 INTRODUCED
2/24 FIRST READING
2/24 REFERRED TO TAXATION
2/24 FISCAL NOTE REQUESTED
3/04 FISCAL NOTE RECEIVED
3/04 FISCAL NOTE PRINTED
3/12 HEARING
3/12 COMMITTEE REPORT—BILL PASSED
3/14 2ND READING PASSED 49 0
3/15 3RD READING PASSED 47 0

TRANSMITTED TO HOUSE
3/18 FIRST READING
3/18 REFERRED TO TAXATION
3/28 HEARING
4/11 COMMITTEE REPORT—BILL CONCURRED AS AMENDED
4/14 2ND READING CONCURRED 98 2
4/15 3RD READING CONCURRED 98 1

RETURNED TO SENATE WITH AMENDMENTS
4/17 2ND READING AMENDMENTS CONCURRED 49 0
4/18 3RD READING CONCURRED AS AMENDED 48 1
4/24 SIGNED BY PRESIDENT
4/24 SIGNED BY SPEAKER
4/24 TRANSMITTED TO GOVERNOR
4/30 SIGNED BY GOVERNOR
CHAPTER NUMBER 466
EFFECTIVE DATE: 04/30/97—SECTIONS 1-9, 13 & 14
EFFECTIVE DATE: 07/01/97—SECTIONS 10-12

SB 387 INTRODUCED BY BISHOP, ET AL. *LC1036 DRAFTER: MARTIN*
REVISE OIL AND NATURAL GAS PRODUCTION TAXES

2/26 INTRODUCED
2/26 FIRST READING
2/26 REFERRED TO TAXATION
2/26 FISCAL NOTE REQUESTED
3/07 FISCAL NOTE RECEIVED
3/07 FISCAL NOTE PRINTED
4/05 MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
DIED IN COMMITTEE

SB 388 INTRODUCED BY BROOKE, ET AL. *LC1362 DRAFTER: MARTIN*
EXEMPT LOTTERY WINNINGS RECEIVED BY A NONPROFIT CORPORATION
FROM THE CORPORATION LICENSE TAX

3/05 INTRODUCED
3/05 FIRST READING
3/05 REFERRED TO TAXATION
3/05 FISCAL NOTE REQUESTED
3/08 FISCAL NOTE RECEIVED
3/10 FISCAL NOTE PRINTED

SENATE BILL NO. 382

INTRODUCED BY

HARR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PRIVATE SECURITIES LITIGATION LAWS; ESTABLISHING REQUIREMENTS FOR SECURITIES FRAUD ACTIONS; PROVIDING SANCTIONS FOR ABUSIVE LITIGATION; LIMITING DAMAGES; CREATING A SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS; REGULATING JOINT AND SEVERAL LIABILITY; REGULATING CONTRIBUTION AMONG PARTIES FOUND TO BE JOINTLY AND SEVERALLY LIABLE; AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Requirements for securities fraud actions. (1) In any private action arising under this part, if the plaintiff alleges that the defendant made an untrue statement or omitted a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading, the complaint must specify each statement alleged to have been misleading and the reason or reasons why the statement is misleading. If an allegation regarding the statement or omission is made on information and belief, the complaint must state with particularity all facts on which that belief is based.

(2) In any private action arising under this part in which the plaintiff may recover money damages only on proof that the defendant acted with a particular state of mind, the complaint must, with respect to each act or omission alleged to violate this part, state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.

(3) In any private action arising under this part, the court shall on the motion of any defendant, dismiss the complaint if the requirements of subsections (1) and (2) are not met.

(4) (a) In any private action arising under this part, all discovery and other proceedings must be stayed during the pendency of any motion to dismiss unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

(b) During the pendency of any stay of discovery pursuant to this subsection (4), unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint

1 shall treat all documents, data compilations, including electronically recorded or stored data, and tangible
2 objects that are in the custody or control of the party and that are relevant to the allegations as if they were
3 the subject of a continuing request for production of documents from an opposing party under the Montana
4 Rules of Civil Procedure.

5 (5) A party aggrieved by the willful failure of an opposing party to comply with subsection (4) may
6 apply to the court for an order awarding appropriate sanctions.

7 (6) In any private action arising under this part, the plaintiff has the burden of proving that the act
8 or omission of the defendant alleged to violate this title caused the loss for which the plaintiff seeks to
9 recover damages.

10
11 **NEW SECTION. Section 2. Sanctions.** (1) In any private action arising under this part, upon final
12 adjudication of the action, the court shall include in the record specific findings regarding compliance by
13 each party and each attorney representing any party with each requirement of Rule 11 of the Montana
14 Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion.

15 (2) If the court makes a finding under subsection (1) that a party or attorney violated any
16 requirement of Rule 11 of the Montana Rules of Civil Procedure as to any complaint, responsive pleading,
17 or dispositive motion, the court shall impose sanctions on the party or attorney in accordance with Rule
18 11. Prior to making a finding that any party or attorney has violated Rule 11, the court shall give the party
19 or attorney notice and an opportunity to respond.

20 (3) (a) Subject to subsections (3)(b) and (3)(c), for the purposes of subsection (2), the court shall
21 adopt a presumption that the appropriate sanction:

22 (i) for failure of any responsive pleading or dispositive motion to comply with any requirement of
23 Rule 11 is an award to the opposing party of the reasonable attorney fees and other expenses incurred as
24 a direct result of the violation; and

25 (ii) for substantial failure of any complaint to comply with any requirement of Rule 11 is an award
26 to the opposing party of the reasonable attorney fees and other expenses incurred in the action.

27 (b) The presumption described in subsection (3)(a) may be rebutted only upon proof by the party
28 or attorney against whom sanctions are to be imposed that:

29 (i) the award of attorney fees and other expenses will impose an unreasonable burden on that party
30 or attorney and would be unjust and the failure to make an award would not impose a greater burden on

1 the party in whose favor sanctions are to be imposed; or

2 (ii) the violation of Rule 11 was de minimis.

3 (c) If the party or attorney against whom sanctions are to be imposed meets its burden under
4 subsection (3)(b), the court shall award the sanctions that the court considers appropriate pursuant to Rule
5 11.

6
7 **NEW SECTION. Section 3. Defendant's right to written interrogatories.** In any private action
8 arising under this part in which the plaintiff may recover money damages, the court shall, when requested
9 by a defendant, submit to the jury a written interrogatory on the issue of each defendant's state of mind
10 at the time the alleged violation occurred.

11
12 **NEW SECTION. Section 4. Limitation on damages.** (1) The provisions of this section limit any
13 damages otherwise available under this part.

14 (2) Except as provided in subsection (3), in any private action arising under this part in which the
15 plaintiff seeks to establish damages by reference to the market price of a security that is traded in a national
16 securities market, the award of damages to the plaintiff may not exceed the difference between the
17 purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean
18 trading price of that security during the 90-day period beginning on the date on which the information
19 correcting the misstatement or omission that is the basis for the action is disseminated to the market.

20 (3) In any private action arising under this part in which the plaintiff seeks to establish damages by
21 reference to the market price of a security, if the plaintiff sells or repurchases the subject security prior to
22 the expiration of the 90-day period described in subsection (2), the plaintiff's damages may not exceed the
23 difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the
24 security and the mean trading price of the security during the period beginning immediately after
25 dissemination of information correcting the misstatement or omission and ending on the date on which the
26 plaintiff sells or repurchases the security.

27 (4) For purposes of this section, the mean trading price of a security must be an average of the daily
28 trading price of that security, determined as of the close of the market each day during the 90-day period
29 referred to in subsection (2).
30

1 NEW SECTION. Section 5. Applicability of safe harbor for forward-looking statements. (1) For
2 the purposes of this section, the following definitions apply:

3 (a) "Forward-looking statement" means:

4 (i) a statement containing a projection of revenue; income per share, including income loss;
5 earnings per share, including earnings loss; capital expenditures; dividends; capital structure; or other
6 financial items;

7 (ii) a statement of the plans and objectives of management for future operations, including plans
8 or objectives relating to the products or services of the issuer;

9 (iii) a statement of future economic performance, including any statement contained in a discussion
10 and analysis of financial condition by the management or in the results of operations;

11 (iv) any statement of the assumptions underlying or relating to any statement described in
12 subsection (1)(a)(i), (1)(a)(ii), or (1)(a)(iii);

13 (v) any report issued by an outside reviewer retained by an issuer, to the extent that the report
14 assesses a forward-looking statement made by the issuer; or

15 (vi) a statement containing a projection or estimate of other items as may be specified by rule or
16 regulation of the commissioner.

17 (b) "Going private transaction" has the meaning given that term under the rules or regulations of
18 the United States securities and exchange commission issued pursuant to section 13(e) of the Securities
19 Exchange Act of 1934, 15 U.S.C. 78m(e).

20 (c) "Investment company" has the same meaning as in section 3(a) of the federal Investment
21 Company Act of 1940, 15 U.S.C. 80a-3(a).

22 (d) "Penny stock" has the same meaning as in section 3(a)(51) of the Securities Exchange Act of
23 1934, 15 U.S.C. 78c(a)(51), and the rules and regulations or orders issued pursuant to that section.

24 (e) "Person acting on behalf of an issuer" means an officer, director, or employee of the issuer.

25 (f) The terms "blank check company", "direct participation investment program", "executive officer
26 of an entity", "limited liability company", "partnership", and "rollup transaction" have the meanings given
27 those terms by rule or regulation of the commissioner.

28 (2) This section applies only to a forward-looking statement made by:

29 (a) an issuer that, at the time that the statement is made, is subject to the reporting requirements
30 of section (13)(a) or (15)(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(a) or 15 U.S.C.

1 78o(d);

2 (b) a person acting on behalf of an issuer subject to the provisions of subsection (2)(a);

3 (c) an outside reviewer retained by an issuer subject to the provisions of subsection (2)(a) making
4 a statement on behalf of that issuer; or

5 (d) an underwriter, with respect to information provided by an issuer subject to the provisions of
6 subsection (2)(a) or information derived from information provided by that issuer.

7 (3) Except to the extent otherwise specifically provided by rule, regulation, or order of the
8 securities and exchange commission, this section does not apply to a forward-looking statement:

9 (a) that is made with respect to the business or operations of the issuer, if the issuer:

10 (i) during the 3-year period preceding the date on which the statement was first made:

11 (A) was convicted of any felony or misdemeanor described in section 15(b)(4)(B)(i) through (iv) of
12 the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4)(B), or was convicted under 30-10-306;

13 (B) has been made the subject of a judicial or administrative decree or order arising out of a
14 governmental action that:

15 (I) prohibits future violations of the antifraud provisions of state or federal securities laws;

16 (II) requires that the issuer cease and desist from violating the antifraud provisions of state or federal
17 securities laws; or

18 (III) determines that the issuer violated the antifraud provisions of state or federal securities laws;

19 (ii) makes the forward-looking statement in connection with an offering of securities by a blank
20 check company;

21 (iii) issues penny stock;

22 (iv) makes the forward-looking statement in connection with a rollup transaction; or

23 (v) makes the forward-looking statement in connection with a going private transaction; or

24 (b) that is:

25 (i) included in a financial statement prepared in accordance with generally accepted accounting
26 principles;

27 (ii) contained in a registration statement of, or otherwise issued by, an investment company;

28 (iii) made in connection with a tender offer;

29 (iv) made in connection with an initial public offering;

30 (v) made in connection with an offering by, or relating to the operations of, a partnership, a limited

1 liability company, or a direct participation investment program; or

2 (vi) made in a disclosure of beneficial ownership in a report required to be filed with the United
3 States securities and exchange commission pursuant to section 13(d) of the Securities Exchange Act of
4 1934, 15 U.S.C. 78m(d).

5 (4) Except as provided in subsection (3), in any private action arising under this part that is based
6 on an untrue statement of a material fact or omission of a material fact necessary to make the statement
7 not misleading, a person referred to in subsection (2) is not liable with respect to any forward-looking
8 statement, whether written or oral, if and to the extent that:

9 (a) the forward-looking statement is identified as a forward-looking statement and is accompanied
10 by meaningful cautionary statements identifying important factors that could cause actual results to differ
11 materially from those in the forward-looking statement or is immaterial; or

12 (b) the plaintiff fails to prove that the forward-looking statement:

13 (i) if made by a natural person, was made with actual knowledge by that person that the statement
14 was false or misleading; or

15 (ii) if made by a business entity, was made by or with the approval of an executive officer of that
16 entity and made or approved by that officer with actual knowledge by that officer that the statement was
17 false or misleading.

18 (5) In the case of an oral forward-looking statement made by an issuer that is subject to the
19 reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C.
20 78m(a) or 15 U.S.C. 78o(d) or by a person acting on behalf of the issuer, the requirement in subsection
21 (4)(a) must be considered satisfied under the following circumstances:

22 (a) if the oral forward-looking statement is accompanied by a cautionary statement that the
23 particular oral statement is a forward-looking statement and that the actual results could differ materially
24 from those projected in the forward-looking statement; and

25 (b) (i) if the oral forward-looking statement is accompanied by an oral statement that additional
26 information concerning factors that could cause actual results to differ materially from those in the
27 forward-looking statement is contained in a readily available written document or portion of the written
28 document;

29 (ii) the accompanying oral statement referred to in subsection (5)(b)(i) identifies the document or
30 portion of the document that contains the additional information about those factors relating to the

1 forward-looking statement; and

2 (iii) the information contained in that written document is a cautionary statement that satisfies the
3 standard established in subsection (4)(a).

4 (6) Any document filed with the commissioner or with the securities and exchange commission or
5 generally disseminated must be considered to be readily available for purposes of this section. This section
6 does not impose upon any person a duty to update a forward-looking statement.

7 (7) On any motion to dismiss based on subsection (4)(a), the court shall consider:

8 (a) any statement cited in the complaint; and

9 (b) any cautionary statement accompanying the forward-looking statement that is not subject to
10 material dispute and that is cited by the defendant.

11 (8) In any private action arising under this part, the court shall stay discovery, other than discovery
12 that is specifically directed to the applicability of the exemption provided for in this section, during the
13 pendency of any motion by a defendant for summary judgment that is based on the grounds that:

14 (a) the statement or omission upon which the complaint is based is a forward-looking statement
15 within the meaning of this section; and

16 (b) the exemption provided for in this section precludes a claim for relief.

17
18 **NEW SECTION. Section 6. Prohibition of referral fees.** A broker, dealer, or person associated with
19 a broker or dealer, may not solicit or accept, directly or indirectly, remuneration for assisting an attorney
20 in obtaining the representation of any person in any private action under this part or under the Securities
21 Act of 1933, 15 U.S.C. 77a, et seq.

22
23 **NEW SECTION. Section 7. Prohibition of attorney fees from disgorgement funds.** Except as
24 otherwise ordered by the court upon motion by the commissioner or, in the case of an administrative
25 action, as otherwise ordered by the commissioner, funds disgorged as the result of an action brought by
26 the commissioner or as a result of any administrative action may not be distributed as payment for attorney
27 fees or expenses incurred by private parties seeking distribution of the disgorged funds.

28
29 **NEW SECTION. Section 8. Prosecution of persons aiding violations.** For purposes of any action
30 brought by the commissioner under 30-10-304, 30-10-305, or 30-10-306, for violations of 30-10-301

1 through 30-10-303, any person that knowingly provides substantial assistance to another person in
2 violation of a provision of this part or of any rule or regulation issued under this part must be considered
3 to be in violation of that provision to the same extent as the person to whom the assistance is provided.

4
5 NEW SECTION. Section 9. Loss causation. In any action arising under this part, if any portion or
6 all of the amount recoverable represents other than the depreciation in value of the subject security
7 resulting from a part of the prospectus or oral communication not being true or omitting to state a material
8 fact required to be stated in the prospectus or oral communication or necessary to make the statement not
9 misleading, then that portion or amount is not recoverable with respect to the liability of that person.

10
11 NEW SECTION. Section 10. Proportional liability. (1) For purposes of this section, the following
12 definitions apply:

13 (a) "Covered person" means:

14 (i) a defendant in any private action arising under this title; or

15 (ii) a defendant in any private action arising under section 11 of the Securities Act of 1933, 15
16 U.S.C. 77k, who is an outside director of the issuer of the securities that are the subject of the action.

17 (b) "Outside director" has the meaning given that term by rule or regulation of the securities and
18 exchange commission.

19 (2) For the purposes of this section, a covered person knowingly commits a violation of Montana
20 securities laws:

21 (a) with respect to an action that is based on an untrue statement of material fact or omission of
22 a material fact necessary to make the statement not misleading, if:

23 (i) that covered person makes an untrue statement of a material fact, with actual knowledge that
24 the representation is false or omits a fact necessary in order to make the statement made not misleading
25 with actual knowledge that as a result of the omission, one of the material representations of the covered
26 person is false;

27 (ii) persons are likely to reasonably rely on that misrepresentation or omission; and

28 (iii) with respect to an action that is based on any conduct that is not described in subsection
29 (2)(a)(i), the covered person engages in that conduct with actual knowledge of the facts and circumstances
30 that make the conduct of that covered person a violation of the securities laws.

1 (3) Reckless conduct by a covered person may not be construed to constitute a knowing
2 commission of a violation of the securities laws by that covered person.

3 (4) This section may not be construed to create, affect, or in any manner modify the standard for
4 liability associated with any action arising under federal securities laws or Montana securities laws.

5 (5) Any covered person against whom a final judgment is entered in a private action is liable for
6 damages jointly and severally only if the trier of fact specifically determines that the covered person
7 knowingly committed a violation of federal securities laws or Montana securities laws.

8 (6) Except as provided in subsection (5), a covered person against whom a final judgment is entered
9 in a private action is liable solely for the portion of the judgment that corresponds to the percentage of
10 responsibility of that covered person as determined under subsection (8).

11 (7) In any case in which a contractual relationship permits, a covered person that prevails in any
12 private action may recover the attorney fees and costs of that covered person in connection with the
13 action.

14 (8) In any private action, the court shall instruct the jury to answer special interrogatories or, if
15 there is not a jury, shall make findings with respect to each covered person and each of the other persons
16 claimed by any of the parties to have caused or contributed to the loss incurred by the plaintiff, including
17 persons who have entered into settlements with the plaintiff or plaintiffs, concerning:

18 (a) whether the person violated federal securities laws or Montana securities laws;

19 (b) the percentage of responsibility of the person, measured as a percentage of the total fault of
20 all persons who caused or contributed to the loss incurred by the plaintiff; and

21 (c) whether the person knowingly committed a violation of the securities laws.

22 (9) The responses to interrogatories or findings, as appropriate, under subsection (8) must specify
23 the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of
24 each covered person found to have caused or contributed to the loss incurred by the plaintiff or plaintiffs.

25 (10) In determining the percentage of responsibility under this section, the trier of fact shall
26 consider:

27 (a) the nature of the conduct of each covered person found to have caused or contributed to the
28 loss incurred by the plaintiff or plaintiffs; and

29 (b) the nature and extent of the causal relationship between the conduct of each covered person
30 and the damages incurred by the plaintiff or plaintiffs.

1 (11) Notwithstanding subsection (8), upon a motion that is made not later than 6 months after a
2 final judgment is entered in any private action, if the court determines that all or part of the share of the
3 judgment of the covered person is not collectible against that covered person and is also not collectible
4 against a covered person described in subsection (5), each covered person described in subsection (5) is
5 liable for the uncollectible share as follows:

6 (a) Each covered person is jointly and severally liable for the uncollectible share if the plaintiff
7 establishes that:

8 (i) the plaintiff is an individual whose recoverable damages under the final judgment are equal to
9 more than 10% of the net worth of the plaintiff; and

10 (ii) the net worth of the plaintiff is equal to less than \$200,000.

11 (b) With respect to any plaintiff not described in subsection (11)(a), each covered person is liable
12 for the uncollectible share in proportion to the percentage of responsibility of that covered person, except
13 that the total liability of a covered person under this subsection (11)(b) may not exceed 50% of the
14 proportionate share of that covered person, as determined under subsection (8).

15 (12) For purposes of subsection (11) net worth must be determined as of the date immediately
16 preceding the date of the purchase or sale, as applicable, by the plaintiff of the security that is the subject
17 of the action and must be equal to the fair market value of assets, minus liabilities, including the net value
18 of the investments of the plaintiff in real and personal property, including personal residences.

19 (13) The total payments required pursuant to subsection (11) may not exceed the amount of the
20 uncollectible share.

21 (14) A covered person against whom judgment is not collectible is subject to contribution and to
22 any continuing liability to the plaintiff on the judgment.

23 (15) To the extent that a covered person is required to make an additional payment pursuant to
24 subsection (11), that covered person may recover contribution:

25 (a) from the covered person originally liable to make the payment;

26 (b) from any covered person liable jointly and severally pursuant to subsection (5);

27 (c) from any covered person held proportionately liable pursuant to this section who is liable to
28 make the same payment and has paid less than that person's proportionate share of that payment; or

29 (d) from any other person responsible for the conduct giving rise to the payment that would have
30 been liable to make the same payment.

1 (16) The standard for allocation of damages under subsections (5) and (6) and the procedure for
2 reallocation of uncollectible shares under subsection (11) may not be disclosed to members of the jury.

3 (17) (a) A covered person who settles any private action at any time before a final verdict or
4 judgment must be discharged from all claims for contribution brought by other persons. Upon entry of the
5 settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations
6 to the plaintiff of the settling covered person arising out of the action. The order must bar all future claims
7 for contribution arising out of the action:

- 8 (i) by any person against the settling covered person; and
9 (ii) by the settling covered person against any person, other than a person whose liability has been
10 extinguished by the settlement of the settling covered person.

11 (b) If a covered person enters into a settlement with the plaintiff prior to final verdict or judgment,
12 the verdict or judgment must be reduced by the greater of:

- 13 (i) an amount that corresponds to the percentage of responsibility of that covered person; or
14 (ii) the amount paid to the plaintiff by that covered person.

15 (18) A covered person who becomes jointly and severally liable for damages in any private action
16 may recover contribution from any other person who, if joined in the original action, would have been liable
17 for the same damages. A claim for contribution must be determined based on the percentage of
18 responsibility of the claimant and of each person against whom a claim for contribution is made.

19 (19) In any private action determining liability, an action for contribution must be brought not later
20 than 6 months after the entry of a final, nonappealable judgment in the action, except that an action for
21 contribution brought by a covered person who was required to make an additional payment pursuant to
22 subsection (11) may be brought not later than 6 months after the date on which the payment was made.

23
24 **NEW SECTION. Section 11. Construction.** [Sections 1 through 10] may not be considered to
25 create or ratify any implied private right of action or to prevent the commissioner, by rule or regulation,
26 from restricting or otherwise regulating private actions under Montana securities laws.

27
28 **Section 12.** Section 27-1-702, MCA, is amended to read:

29 **"27-1-702. Comparative negligence -- extent to which contributory negligence bars recovery in**
30 **action for damages.** ~~Contributory~~ Except as provided in [section 10], contributory negligence shall may not

1 bar recovery in an action by any person or ~~his~~ the person's legal representative to recover damages for
2 negligence resulting in the death of a person or injury to a person or property if ~~such~~ the negligence was
3 not greater than the negligence of the person or the combined negligence of all persons against whom
4 recovery is sought, but any damages allowed ~~shall~~ must be diminished in the proportion to the amount of
5 negligence attributable to the person recovering."

6
7 **Section 13.** Section 27-1-703, MCA, is amended to read:

8 **"27-1-703. Multiple defendants -- determination of liability.** (1) Except as provided in subsections
9 (2) and (3), whenever the negligence of a party in any action is an issue, each party against whom recovery
10 may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has
11 the right of contribution from any other person whose negligence may have contributed as a proximate
12 cause to the claimant's injury ~~complained of~~.

13 (2) A party whose negligence is determined to be 50% or less of the combined negligence of all
14 persons described in subsection (4) is severally liable only and is responsible only for the amount of
15 negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly
16 and severally liable for the total less the amount attributable to the claimant.

17 (3) A party may be jointly liable for all damages caused by the negligence of another if both acted
18 in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

19 (4) On motion of any party against whom a claim is asserted for negligence resulting in death or
20 injury to person or property, any other person whose negligence may have contributed as a proximate
21 cause to the claimant's injury ~~complained of~~ may be joined as an additional party to the action. For
22 purposes of determining the percentage of liability attributable to each party whose action contributed to
23 the claimant's injury ~~complained of~~, the trier of fact shall consider the negligence of the claimant, injured
24 person, defendants, and third-party defendants. The liability of nonparties, including persons released from
25 liability by the claimant and persons immune from liability to the claimant, must also be considered by the
26 trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of
27 all persons listed in this subsection. Contribution must be proportional to the liability of the parties against
28 whom recovery is allowed. Nothing contained in this section makes any party indispensable pursuant to
29 Rule 19, Montana Rules of Civil Procedure.

30 (5) If for any reason all or part of the contribution from a party liable for contribution cannot be

1 obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the
2 noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution
3 from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is
4 liable for contribution under this section only up to the percentage of negligence attributed to that party.

5 (6) (a) In an action based on negligence, a defendant may assert as a defense that the damages
6 of the claimant were caused in full or in part by a nonparty, which may be referred to as a nonparty
7 defense.

8 (b) In determining the percentage of liability attributable to persons who are parties to the action,
9 the trier of fact shall consider the negligence of nonparties, including persons released from liability by the
10 claimant and persons immune from liability to the claimant, if a nonparty defense is properly asserted in
11 accordance with this subsection (6). A finding of negligence of a nonparty is not a presumptive or
12 conclusive finding as to that nonparty for purposes of a prior or subsequent action involving that nonparty.

13 (c) The burden of proof as to a nonparty's liability is on the defendant or defendants who
14 affirmatively plead the nonparty defense, but this subsection (6) does not relieve the claimant of the burden
15 of proving that negligence on the part of the defendant or defendants contributed as a proximate cause to
16 the injury of the claimant or alter other proof requirements.

17 (d) A nonparty defense must be affirmatively pleaded as a part of the answer. A defendant who
18 gains actual knowledge of a nonparty defense after the filing of that defendant's answer may plead the
19 defense with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

20 (i) giving the defendant a reasonable opportunity to discover the existence of a nonparty defense;
21 (ii) giving the claimant a reasonable opportunity to defend against a nonparty defense; and
22 (iii) giving the claimant a reasonable opportunity, if appropriate, to add the nonparty as an additional
23 defendant to the action before the expiration of the period of limitation applicable to the claim. However,
24 this subsection (iii) does not extend the period of limitation or revive the action if the period of limitation
25 has expired.

26 (e) If a defendant asserts a nonparty defense, the defendant shall notify each nonparty who the
27 defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing
28 the defendant's answer to each nonparty at the nonparty's last-known address by certified mail, return
29 receipt requested.

30 (7) The provisions of this section do not apply to [section 10]."

1 NEW SECTION. **Section 14. Codification instruction.** [Sections 1 through 11] are intended to be
2 codified as an integral part of Title 30, chapter 10, part 3, and the provisions of Title 30, chapter 10, part
3 3, apply to [sections 1 through 11].

4

5 NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

6

-END-

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on February 21, 1997, at 8:06 a.m., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: Sb 382, SB 383, posted
February 18, and SB 385,
posted February 20

Executive Action: SB 374, SB 382, SB 383, SB 385

EXECUTIVE ACTION ON SB 374

Amendments: sb037401a.avl (EXHIBIT #1)

SEN. STEVE DOHERTY asked Mary Ann Wellbank and Amy Pfeifer to explain the amendments. Amy Pfeifer. Amendments 1 and 10 were requested by the Department of Fish, Wildlife and Parks; amendment 2 is from DPHHS and makes language compatible to federal language on forms; amendment 3 pertains to new hire reporting penalty for each employee; amendment 4 corrects an omission; amendment 5 provides for an automated data match with financial institutions; amendment 6 pertains to withholding from

This would also allow health insurance coverage for the child of a step-father.

Opponents' Testimony: None

Questions From Committee Members and Responses: SEN. RIC

HOLDEN. I am concerned with the language in Section 2 pertaining to birth registration and the exception on page 4. Also, Hank Hudson, DPHHS, is here to answer any technical questions on the bill.

SEN. HALLIGAN. Regarding your language that the mother is entitled to sole custody and the father being given notice, what if the man sends a letter to the mother acknowledging he is the parent? I see tremendous problems with notice here, and for the courts. SEN. STANG. I don't have a problem with clarifying this language. The intent of the bill is that the Courts will give a form to the mother to send to the father to see if he would respond.

SEN. HALLIGAN. On page 2, line 6, even though the father loses parental rights, he must still be liable for child support. SEN. STANG. This language is necessary for child support statutes. Hank Hudson. HB 163 heard in the House Judiciary Committee addresses putative father registry issues and nothing in that bill changes the current situation.

SEN. HOLDEN. Is HB 163 the revision of adoption laws by REP. JOHN JOHNSON? Hank Hudson. It's a revenue bill, so it's not subject to transmittal, and is still being worked on.

Closing by Sponsor: SEN. STANG. I would be happy to make necessary changes to get this bill to the floor as my constituents feel very strongly about this, and it is an issue, especially in low income areas.

HEARING ON SB 382

Sponsor: SEN. JOHN HARP, SD 42, Kalispell

Proponents: Janice Rehberg, Semi-Tool and Crowley law firm
Allan Karell, Crowley Law Firm, Billings for Semi-Tool
John Sullivan, CEO, Semi-Tool
David Dennis, General Counsel for D.A. Davidson and DADGO Companies
John Cadby, Montana Banker's Association
Steve Browning. Pacific North

Opponents: Mark O'Keefe, State Auditor
Russell Hill, Montana Trial Lawyers Association (MTLA)
Paul Stahl, Deputy Lewis and Clark County Attorney

Irene Theurer, American Association of Retired
Persons (AARP)
Dick Pattison, President, Montana Senior Citizens
Association
Gordon Morris, Director, Montana Association of
Counties (MACO)

Opening Statement by Sponsor: SEN. JOHN HARP, SD 42, Kalispell.
In 1995 Congress passed this legislation. The vote was 3 to 1 in
favor in the House and 65 percent of the Senate voted for it.
Congress was trying to alleviate speculative and frivolous
lawsuits against securities companies. This bill would implement
the federal act in Montana. It would avert forum-shopping by
plaintiffs.

A threshold occurs and protects corporations from the expense of
frivolous law suits. This is a concern of the opponents, the
MTLA, as the process identifies meaningless cases early in
discovery.

Another issue I appreciate in the bill, is that nothing would
take away from the enforcement mechanism of the State Auditor's
Office. As a matter of record, Montana has domiciled 13 publicly
traded companies, and they are concerned about the potential of
frivolous litigation. There are protections in the bill for
consumers.

Proponents' Testimony: Janice Rehberg, Semi-Tool and Crowley law
firm. We did have to make some adjustments from the federal act
for Montana, so I have a few amendments which make these
corrections. (EXHIBIT #5). I will also have one other amendment.

I believe SEN. HARP reflected the intent accurately. This is not
an abnormal procedure. It applies to publicly traded companies
and I believe it is more fair to have similar rules in both the
State and Federal Courts.

Securities litigation can be very costly and time-consuming. The
effort at the federal level began in 1991, and hearings were held
for four years. Companies were caught in a 'catch 22' situation
and this bill was an attempt to protect consumers and companies,
as well.

{Tape: 1; Side: A; Approx. Time Count: #12.5; Comments: 9:06
a.m..}

A plaintiff must show that a case is legitimate. We need to let
this system work by allowing this bill to pass. We have a
representative here from Semi-Tool, and others.

Allan Karell, Crowley law firm, Billings for Semi-Tool. Sections
4 and 5 are the salient points of the bill. The first section
deals with types of pleadings required for elements of the case
regarding public securities trading. There is a provision for a

stay of discovery to protect a company from huge respondent costs.

Section 2 deals with sanctions. Current Montana law is Rule 11. Section 4 deals with damages and establishes a 90-day market period to measure the price of stock for the purpose of calculating damages. This is a buffer against immediate miscreate suits when stock prices drop.

Section 5 allows companies to provide information if they choose to do so. Section 9 has a loss causation limit up to the amount from the alleged mistake and no more. Section 10 is proportional liability and brings Montana securities laws up to date concerning losses and damages in general. It does retain joint and several liability for all defendants in a 'knowing' violation.

Three thoughts: 1) the bill is narrowly tailored and applies only to public companies; 2) it outlines defendant's expenses; and 3) it makes an adjustment to level the litigation field between the plaintiff and the defendant, and makes Montana conform to federal law.

John Sullivan, CFO, Semi-Tool. We are the first company in Montana to be bit by one of these suits. We are traded on the NASDAQ. Suits are increasing against companies whose stock price drops, many of which are frivolous and designed to inflict pain and get a settlement.

In 1995 Congress tried to address this, resulting in the Private Securities Litigation Reform Act (PSLRA). Both of Montana's legislators voted for this. Two months later Semi-Tool was hit with a lawsuit, so our potential adversaries are operating on a different set of laws. We need SB 382 to put all parties under similar laws.

David Dennis, General Counsel for D.A. Davidson and DADGO Companies. A lot of securities laws are very complicated. Former University of Montana Law School instructor, Bruce McKenzie, told us as law students that the purpose of the Federal Securities Act was to level the playing field.

These private causative action suits for 'knowing' fraud are class action suits and are very expensive to defend, costing from several hundred thousand dollars to over one million dollars. Therefore, some companies are settling for large amounts rather than going through expensive litigation.

In the 1990s this trend became worse, and Congress formed a committee to examine these abuses, and came up with this Act in 1995 which received overwhelming support by both the House (319 votes) and the Senate (68 votes). President Clinton vetoed the bill, but Congress overrode the presidential veto.

State Court laws usually mirror federal court laws, but Montana has not yet corrected this situation. The federal law encourages disclosure, which drives the securities industry and is very important.

D.A.D. has a vested interest, and needs to be able to give the best advice possible to its clients. This legislation does not change the standard for a fraud claim, but for pleading a fraud claim.

John Cadby, Montana Banker's Association. We heartily endorse this bill - both large and small banks. We ask that the Committee pass the bill.

Steve Browning. Pacific North has retained me for three days for deregulation of the electronics industry which means additional need for securities offerings, which is also regulated by the PSC. (EXHIBIT #6 and #7). As the time for a separate bill has passed, I am offering this amendment for consideration. I believe this fits within the title, except for the word 'litigation'.

{Tape: 1; Side: A; Approx. Time Count: #37.9-#41.6; Comments: None.}

Opponents' Testimony: Mark O'Keefe, State Auditor (EXHIBIT #8), read from prepared testimony in opposition to the bill. False and misleading statements are not easy for a consumer to prove. We do not need to foster deliberate ignorance in this industry. Financial means tests would prevent plaintiffs from collecting who have valid claims. Most in the industry are honest. We're concerned with the one-tenth of one percent who aren't. I believe this is a grey area to tinker with. I have a copy of a Forbes magazine article on Wall Street Sleaze (EXHIBIT #9).

In Lewis and Clark County two Houston securities companies sold collateralized securities obligations to the County. They created internal documents and misrepresented the investments. Seven million of taxpayer dollars were invested in these CMOs. Under SB 382 my ability to order the restitution would disappear, and the county would have no private remedy. This legislation could take certain safeguards from Montanans.

I want to make two points: 1) the extraordinary levels of proof are a hurdle; and 2) the bill denies the victims the ability to move quickly via delay of discovery and motion to dismiss. This creates a higher standard of proof in the securities industry than in banking, insurance, or real estate. This is a basic issue of fairness. It's a bad bill for the financial industry profession, markets, and for investors. Please do not pass this bill.

Russell Hill, Montana Trial Lawyers Association (MTLA). We vigorously oppose this bill. On the floor of the Senate in 1995,

SEN. HARP withdrew a bill he had on the floor when it was no longer necessary, and I respect him for that. Contingent-fee attorneys only get paid when they do their job, while securities industry companies could still keep the money. The area of the bill addressing reckless conduct means their fee. Page 6, Subsection (4) feeds into Subsection (b)(2) and is an incredible relaxation of standards.

{Tape: 1; Side: B; Approx. Time Count: #13.6; Comments: 9:48 a.m..}

Page 11, lines 11-14 are patently unconstitutional in Montana. Subsection (d) reduces the way a settlement is given back to a party.

A bill in House Judiciary Committee changes Montana's comparative negligence law significantly (page 12, lines 2-4).

On page 11, lines 1-2, we still haven't seen a fully-informed jury amendment, and this is opposite in the bill, as one can't disclose to the jury what the company is up to. It protects Montanans from attorneys who assume the risk of being wrong.

Paul Stahl, Deputy Lewis and Clark County Attorney. Fourteen other counties bought the CMOs you heard about, in addition to Lewis and Clark County. I believe we need balance in the bill. The State Auditor did a remarkable, outstanding job in helping us, but it takes time because of budgets. The SEC is still in the discovery stage in our situation. I see the bill as preventing us from going after these companies who have wronged us.

I've been a defense attorney for seventeen years, but this bill is unfair. I'm also an attorney for adult protective services, and I hear stories daily of elderly persons being taken advantage of by unscrupulous salesmen. A rancher in Augusta sold his ranch and invested the money with such a salesman and lost that money.

Irene Theurer, American Association of Retired Persons (AARP) (EXHIBIT #10). This bill is a safe harbors for sellers only, and not for buyers. It places the entire burden and cost of proof on the buyer. Standards allow a judge now to determine if a suit is frivolous.

Dick Pattison, President, Montana Senior Citizens Association read from prepared testimony. This bill is really about people, and not about corporations. A study at Berkeley showed only 20 suits were filed out of 589 times stocks dropped suddenly, during the time of the study. Please do not pass this bill.

Gordon Morris, Director, Montana Association of Counties (MACO). Local government officials oppose this, just as they opposed S240 in 1995 in Congress, because of the risk to public dollars. We

asked what would have happened to Charles Keating back in the 1970s with this legislation?

{Tape: 1; Side: B; Approx. Time Count: #27.0; Comments: 10:02 a.m..}

Questions From Committee Members and Responses: SEN. DOHERTY. Are you defending or familiar with this law suit? Allan Karell. No. I defended securities lawsuits in Oregon for a very large corporation.

SEN. DOHERTY. Have your attorneys filed Rule 11 sanction motions, and if so, what has happened? John Sullivan. Rule 11 has been discussed. There have been no specific pleadings since December, 1996.

SEN. DOHERTY. You said this bill would not change the standard of proof with regard to fraud. I looked at Rule 9(b) and Sections 1 and 2. If this bill doesn't change this standard of proof with regard to fraud, it does significantly change the standard with regard to proof of fraud.

{Tape: 1; Side: B; Approx. Time Count: #29.6; Comments: None.}

This is a significant piece of legislation. Why, in the section on page 10 regarding proportional liability, is the net worth of the plaintiff important in whether they can collect on the judgment? SEN. HARP. That is a good questions. I will call Senators Baucus and Burns to check on this today.

SEN. HOLDEN. Russell Hill made some points, on page 9, lines 1-2 concerning reckless conduct. Allan Karell. Subsection 3) of this must be read in context. It doesn't mean they can't collect, but that they can collect on a proportional basis.

SEN. HOLDEN. What about Russell Hill's comments on page 11, lines 1-2, and lines 11-14? Allan Karell. The intent is to take away the tremendous leverage against defendants. I don't know that is unfair. Again, this has been taken out of context. I don't know that it is unfair to tell the jury the amount of damage.

SEN. HALLIGAN. On lines 14-15, how will you every be able to prove approval by an executive officer? By oral statements? Allan Karell. That merely places limits on early discovery.

SEN. HALLIGAN. How would someone prove an older person's word against a young salesperson's word? Allan Karell. This bill doesn't do that much for securities salespeople, but deals with forward-looking issues.

SEN. DOHERTY. How many 'blitzkrieg' suits were filed in Montana courts the past five years? Allan Karell. I don't know. Most

are at the federal level, but there is potential to move now into state courts.

SEN. DOHERTY. Why are you amending comparative negligence in Sections 12 and 13, and can that be stricken? They may dovetail with federal law, but that will affect every other single cause of action in Montana will it not? Allan Karell. I don't believe so.

Closing by Sponsor: SEN. HARP. The State Auditor needs to look at Section 11. Why didn't he bring reform suggestions to the Legislature. I am disappointed by the example of Lewis and Clark County, as nothing in this bill will impair that situation. Fraud situations will continue to occur in Montana.

VICE CHAIRMAN GROSFIELD assumed the Chair at this point.

{Tape: 1; Side: B; Approx. Time Count: #31.1; Comments: None.}

HEARING ON SB 383

Sponsor: SEN. BRUCE CRIPPEN, SD 10, Billings

Proponents: David Ward, Chief of Police, Billings
Sergeant Ken Dovo, Billings Police Department
John Conner, Department of Justice
Dennis Paxinos, Yellowstone County Attorney
Jeff Beecroft, Detective, Great Falls Police Department
Chuck O'Reilly, Lewis and Clark County Sheriff
Guy Baker, Missoula Police Department
Tim Shanks, Montana Police Protective Association and Great Falls Police Department
Bob Charles, Montana Chapter of the National Association of Social Workers.

Opponents: None

Opening Statement by Sponsor: SEN. BRUCE CRIPPEN, SD 10, Billings. This is the Montana Terrorism Prevention and Enforcement Act, dealing with street gangs. Early last year, I received a call from Dave Ward, Billings Police Chief, concerning the trend in Billings and elsewhere in Montana of the surfacing of organized gangs, generally of a certain age. I also spoke with Mr. Watson, Billings City Administrator. We looked to California and other states for language to define terms from a legal and legislative perspective to help the judicial system deal with this problem. The 'whereases' define the problem; Section 2 is definitions; Section 3 defines use of threat to coerce, and the penalty; Section 4 deals with enhancement of current law; Section 5 is the real guts of the bill and defines patterns of street gang activity.

Vote: VICE CHAIRMAN GROSFIELD'S MOTION TO TAKE SB 96 OFF THE TABLE FAILED WITH ALL MEMBERS VOTING NO EXCEPT SENATORS MCNUTT, GROSFIELD, CRIPPEN AND BARTLETT WHO VOTED YES.

EXECUTIVE ACTION ON SB 382

Amendments: Valencia Lane. The Committee has amendments from Steve Browning and Janice Rehberg.

Discussion: CHAIRMAN CRIPPEN. Can the Browning amendment be done? Valencia Lane. I believe so. We would need the title to correspond though. CHAIRMAN CRIPPEN. There does not appear to be interest in these amendments among the Committee.

SEN. HALLIGAN. This is a classic case which a securities study commission should address. I would be happy to sign on a resolution for this.

Motion/Vote: SEN. HOLDEN MOVED TO ADOPT SEN. HARP'S AMENDMENTS, AS SUBMITTED BY JANICE REHBERG. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN. DOHERTY WHO VOTED NO.

Discussion: Valencia Lane. I was handed a bill with a renumbering outline by Janice Rehberg. That outline didn't work, so I'm asking for authority to re-outline these subsections being renumbered by the adoption of these amendments. CHAIRMAN CRIPPEN. Okay.

Valencia Lane. Also, SEN. HARP has requested a severability clause for this bill. CHAIRMAN CRIPPEN. We will deal with that later.

Motion/Vote: VICE CHAIRMAN LORENTS GROSFIELD MOVED TO ADOPT SEN. HARPS STANDARD SEVERABILITY CLAUSE AMENDMENT. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN. DOHERTY WHO VOTED NO.

SEN. HALLIGAN. I still believe this is a large subject.

Motion: SEN. HALLIGAN MOVED TO TABLE SB 382 AND TO CREATE A STUDY RESOLUTION TO "GET THIS DONE RIGHT."

Substitute Motion: SEN. AL BISHOP MADE A SUBSTITUTE MOTION THAT SB 382 DO PASS AS AMENDED.

Discussion: SEN. DOHERTY. This bill contains substantial changes to the standard of proof by which Montanans are protected against con-artists, and it puts Montana investors at risk. The securities industry didn't sit down with the Securities Commission, but is pushing this through on the last day of transmittal. This is a one-sided bill. It will harm local governments and Montanans.

SEN. HOLDEN. I commend SEN. HARP for his efforts. It is important to take action at the state level, so I support the bill.

SEN. BISHOP. I agree in part with SEN. DOHERTY, but this bill should go to the Senate floor for debate and must go through "never, never land" (the House).

SEN. DOHERTY. For the record, the diminishment of standards and the attempt to prove in pleadings the details required, impairs Montanans' abilities to bring these actions. The necessary requirements are already in the law. These fraud requirements are not required for any other area in Montana. I don't believe plaintiff's attorneys bring these cases lightly, and I believe it's going to be rolled through.

SEN. ESTRADA. I agree with SEN. DOHERTY, and am concerned by the Majority Leader telling us not to do complex bills at the last minute, and then doing so himself. I have concerns and questions to be answered.

SEN. BISHOP. Let's do this. We're being paid to study this matter now.

SEN. DOHERTY. The securities industry knew about this federal act for over a year, so I don't understand the lateness of the LC number and the bill request. CHAIRMAN CRIPPEN. Obviously this was bi-partisan at the federal level, as both Senators Baucus and Burns supported it, even after the President vetoed it.

SEN. BISHOP. If the same criteria holds for other complex bills presented at the 11th hour, let's kill SB 374, too. I believe this bill deserves to go to the Senate.

Vote: SEN. BISHOP'S MOTION THAT SB 382 DO PASS AS AMENDED CARRIED IN A ROLL CALL VOTE (6-4).

THE COMMITTEE RECESSED AT 12 NOON AND RECONVENED AT 12:15 P.M.

EXECUTIVE ACTION ON SB 374

Amendments: sb037402.av1 (EXHIBIT #13)

Motion: SEN. HOLDEN MOVED TO AMEND SB 374 - sb37402.av1.

Discussion: SEN. HOLDEN. There are getting to be more and more social security numbers than names on more and more documents. CHAIRMAN CRIPPEN. Some people don't have social security numbers, as they are not required by law, but they are required to have a TIF.

SEN. HALLIGAN. If several people have the same name, this will be a problem, so I oppose the motion.

AMENDMENTS TO SB 382
offered by
SENATOR HARP
February 21, 1997

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. EX 5
DATE 2 Feb 97
FILE # SB 3828

1. Page 3, line 21.
Following "a security"
Insert: "that is traded on a national securities market"
2. Page 7.
Following: line 3
Strike: "(6)"
Insert: "(c)"
3. Page 7, line 5.
Following: "section."
Insert: "(6)"
4. Page 10, line 10.
Following: "is"
Strike: "equal to"
5. Page 8, line 5
Following: "any"
Insert: "private"

h Legislature

LC1348.01

SB382

SENATE JUDICIARY COMMITTEE
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PAGE NO. SB382

liability company, or a direct participation investment program; or

(vi) made in a disclosure of beneficial ownership in a report required to be filed with the United States securities and exchange commission pursuant to section 13(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(d).

(4)(a) Except as provided in subsection (3), in any private action arising under this part that is based on an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading, a person referred to in subsection (2) is not liable with respect to any forward-looking statement, whether written or oral, if and to the extent that:

(i) the forward-looking statement is identified as a forward-looking statement and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement or is immaterial; or

(b) the plaintiff fails to prove that the forward-looking statement:

(i) if made by a natural person, was made with actual knowledge by that person that the statement was false or misleading; or

(ii) if made by a business entity, was made by or with the approval of an executive officer of that entity and made or approved by that officer with actual knowledge by that officer that the statement was false or misleading.

(5) In the case of an oral forward-looking statement made by an issuer that is subject to the reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(a) or 15 U.S.C. 78o(d) or by a person acting on behalf of the issuer, the requirement in subsection (4)(a) must be considered satisfied under the following circumstances:

(a) if the oral forward-looking statement is accompanied by a cautionary statement that the particular oral statement is a forward-looking statement and that the actual results could differ materially from those projected in the forward-looking statement; and

(b) if the oral forward-looking statement is accompanied by an oral statement that additional information concerning factors that could cause actual results to differ materially from those in the forward-looking statement is contained in a readily available written document or portion of the written document;

(c) if the accompanying oral statement referred to in subsection (b)(i) identifies the document or portion of the document that contains the additional information about those factors relating to the

1 forward-looking statement; and
2 (iv) ~~the~~ ^{the} information contained in that written document is a cautionary statement that satisfies the
3 standard established in subsection (4)(a).

4 (5) Any document filed with the commissioner or with the securities and exchange commission or
5 generally disseminated must be considered to be readily available for purposes of this section. (5) This section
6 does not impose upon any person a duty to update a forward-looking statement.

7 On any motion to dismiss based on subsection (4)(a), the court shall consider:

8 (a) any statement cited in the complaint; and

9 (b) any cautionary statement accompanying the forward-looking statement that is not subject to
10 material dispute and that is cited by the defendant.

11 (8) In any private action arising under this part, the court shall stay discovery, other than discovery
12 that is specifically directed to the applicability of the exemption provided for in this section, during the
13 pendency of any motion by a defendant for summary judgment that is based on the grounds that:

14 (a) the statement or omission upon which the complaint is based is a forward-looking statement
15 within the meaning of this section; and

16 (b) the exemption provided for in this section precludes a claim for relief.

17

18 NEW SECTION. Section 6. Prohibition of referral fees. A broker, dealer, or person associated with
19 a broker or dealer, may not solicit or accept, directly or indirectly, remuneration for assisting an attorney
20 in obtaining the representation of any person in any private action under this part or under the Securities
21 Act of 1933, 15 U.S.C. 77a, et seq.

22

23 NEW SECTION. Section 7. Prohibition of attorney fees from disgorgement funds. Except as
24 otherwise ordered by the court upon motion by the commissioner or, in the case of an administrative
25 action, as otherwise ordered by the commissioner, funds disgorged as the result of an action brought by
26 the commissioner or as a result of any administrative action may not be distributed as payment for attorney
27 fees or expenses incurred by private parties seeking distribution of the disgorged funds.

28

29 NEW SECTION. Section 8. Prosecution of persons aiding violations. For purposes of any action
30 brought by the commissioner under 30-10-304, 30-10-305, or 30-10-306, for violations of 30-10-301

STATE JUDICIARY COMMITTEE

COMMIT NO. 6

DATE 2-21-97

ISSUE NO. SB 382

DRAFT
February 20,
1997
1:07 pm

2-21-97
EX SB 382
Steve Browning

PROPOSED AMENDMENTS FOR MONTANA

Section 1. Section 69-3-506 of Title 69, chapter 3, part 5 is amended to read as follows:

69-3-506. Unapproved securities void. Except as provided in 69-3-505 and 69-3-508, all securities issued, assumed, or guaranteed after July 1, 1961, without approval by the commission as provided herein shall be void.

Section 2. A new section is added to Title 69, chapter 3, part 5 to read as follows:

69-3-508. Exemptions. The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed therein, exempt any security or any class of securities for which an application is required under this part or any public utility or class of public utility from the provisions of this part if it finds that the application thereof to such security, class of securities, public utility or class of public utility is not required by the public interest.

Part 5

Issuance of Securities and Creation of Liens

Part Cross-References

Uniform Commercial Code — investment securities, Title 30, ch. 8

69-3-501. Regulation of issuance of securities and creation of liens by utilities. (1) Whenever a public utility furnishing electric or gas service in the state has revenue derived from sources in Montana which exceeds \$5 million or 5% of its gross revenue, the utility's right to issue, assume, or guarantee securities and to create liens on its property in the state is subject to the regulation and supervision of the commission, as set forth in this part.

(2) The public utility, when authorized by order of the commission and not otherwise, may issue stocks and stock certificates and may issue, assume, or guarantee other securities payable at periods of more than 12 months thereafter for the following purposes:

- (a) the acquisition of property;
- (b) the construction, completion, extension, or improvement of its facilities;
- (c) the improvement or maintenance of its service;
- (d) the discharge or lawful refunding of its obligations;
- (e) the reimbursement of money actually expended for said purposes from income or from other money; or
- (f) any other purpose approved by the commission.

History: En. Sec. 1, Ch. 74, L. 1961; R.C.M. 1947, 70-117.1; amd. Sec. 1, Ch. 354, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

69-3-502. Petition for issuance of securities. Such public utility shall, by written petition, filed with the commission and setting forth the pertinent facts involved, make application to the commission for an order authorizing the proposed issue, assumption, or guarantee of securities and the application of the proceeds therefrom for the purposes specified.

History: En. Sec. 2, Ch. 74, L. 1961; R.C.M. 1947, 70-117.2(part).

69-3-503. Prompt consideration of petition. All applications to the commission hereunder shall be disposed of promptly and in any event within 30 days after petition is filed with the commission unless, for good cause, it is necessary to continue consideration thereof for a longer period. Whenever such application is continued beyond said 30-day period, the commission shall enter its order effecting such continuance and stating fully therein the facts requiring continuance for a designated period of time.

History: En. Sec. 4, Ch. 74, L. 1961; R.C.M. 1947, 70-117.4.

69-3-504. Decision on petition. After such hearing and upon such notice as the commission may prescribe, the commission shall enter its written order approving the petition and authorizing the proposed securities transactions unless the commission shall find that:

- (1) such transactions are inconsistent with the public interest;
- (2) the purpose or purposes thereof are not permitted by this part; or

69-3-505

PUBLIC UTILITIES AND CARRIERS

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(3) the aggregate amount of the securities outstanding and proposed to be outstanding would exceed the fair value of the properties and business of the public utility.

History: En. Sec. 2, Ch. 74, L. 1961; R.C.M. 1947, 70-117.2(part).

69-3-505. Issuance of certain short-term obligations. Such public utility may issue notes or drafts maturing not more than 1 year after the date of such issue, renewal, or assumption of liability and aggregating, together with all other then outstanding notes and drafts of a maturity of 1 year or less on which such public utility is primarily or secondarily liable, not more than 5% of the par value of the other securities of the public utility then outstanding, without application to or order of the commission. In the case of securities having no par value, the par value for the purpose of this section shall be the fair market value as of the date of issuance of such notes or drafts.

History: En. Sec. 3, Ch. 74, L. 1961; R.C.M. 1947, 70-117.3.

69-3-506. Unapproved securities void. Except as provided in 69-3-505, all securities issued, assumed, or guaranteed after July 1, 1961, without approval by the commission as provided herein shall be void.

History: En. Sec. 5, Ch. 74, L. 1961; R.C.M. 1947, 70-117.5.

69-3-507. State not obligated on securities. No provision of this part or any act or deed done or performed in connection therewith shall be construed to obligate the state to pay or guarantee in any manner whatsoever any security authorized, issued, assumed, or guaranteed under the provisions of this part.

History: En. Sec. 6, Ch. 74, L. 1961; R.C.M. 1947, 70-117.6.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

State Finance, Title 17.

Good morning, Mr. Chairman and members of the committee.

I am State Auditor Mark O'Keefe, and serve as commissioner of securities. As commissioner of one of 50 state securities agencies responsible for investor protection and the efficient functioning of the capital markets at the grass-roots level, I feel compelled to speak out against the anti-consumer provisions of this bill.

Though I speak in opposition to this particular bill, this should not be considered as opposition by the State Auditor or the Securities Department to meaningful securities litigation reform. There are measures that could be supported by industry and consumers alike that could prevent the filing of frivolous law suits.

But those measures are not before you today. Instead, you are considering a bill that would incorporate a federal litigation reform package into state law without any particular focus on the needs of Montana residents or Montana securities industry representatives.

Initially, I want to note that the keystone of our securities markets is public confidence. When considering

any securities litigation reform package, the overriding question is whether investors or potential investors may feel confident that they can expect fair treatment from the system.

I will highlight a few provisions of this bill that upset the balance of fairness in the business of securities and, consequently, undermine public confidence in our financial markets.

The safe harbor provisions of this bill immunize issuers or agents who make “forward-looking statements” that are false or misleading, so long as the sales pitch includes a two-second reference to potential risk, regardless of how long or false and misleading the sales pitch is.

A “forward looking statement” is statement of future economic performance, usually used to encourage the sale of a security. These kinds of statements are a favorite tool of con artists, who use them to artificially manipulate the price of public company stock. Unscrupulous agents use them to buck for a commission. Allowing a so-called safe harbor for issuers and agents

that misrepresent or lie about the future economic performance of a security chips away at an investor's confidence that the deck is not stacked against him or her when investing.

This bill also narrowly limits an individual's access to justice by making consumers show that an offender actually knew that a statement was false or misleading. In order to prevail in a claim, an investor would have to prove that the statement was made with actual knowledge that it was false, or a statement was intentionally omitted. While it is difficult enough to prove that a person actually knew a statement was false even in the worst cases, this higher standard would create a tremendous incentive for financial services professionals to remain ignorant of facts necessary to engage in the securities business.

Deliberate ignorance is exactly the wrong type of behavior that we need to encourage from fiduciaries and advisers if we want to foster public confidence in our markets.

Even after a plaintiff has overcome this bill's high hurdles to his or her civil action, and has undeniably proven a case of securities fraud in a civil action, this bill

employs a financial means test to prevent individuals from collecting damages from those responsible for his or her loss if any share of his or her damages are uncollectible. The means test is a tool for discrimination against similarly situated plaintiffs with valid, proven claims.

Investor suits serve not only as a means of recovery for victims of securities fraud, but as a deterrent to those who may purposely violate the securities laws to gain an unfair advantage over competitors who closely follow the law. Most of those employed in the financial services industry are hard-working people committed to their obligations under the law. But the few individuals and entities that stray from the bounds of legal and ethical conduct in the securities industry cause great harm to investors. That's why I think safeguarding the system by which those individuals are able to seek redress and recovery is a grave responsibility.

Let me give you some real examples of what I'm talking about.

This recent article in Forbes magazine, entitled "Sleazy Doings on Wall Street," details systematic

fraudulent activity by a “bucket shop” associated with a more prestigious brokerage firm. The bucket shop systematically engaged in many types of fraudulent activity, including artificial manipulation of stock prices by use of “nominee,” or fictitious accounts, unauthorized trading, and abusive sales practices. These outfits have rooms full of telephones and engage in sales of securities at artificially inflated prices. When it declared bankruptcy, this particular outfit caused losses to investors to the tune of \$22 million dollars.

The other example comes from right here in Lewis and Clark County.

Two Houston securities firms sold high-risk investments, known as collateralized mortgage obligations, that were inappropriate for the county’s investment portfolio. One firm, we alleged, engaged in manipulative or deceptive practices by creating internal documents to make it appear that the level of risk of investments sold to the county was appropriate.

One Houston firm misled the county through correspondence that misrepresented the investments by

indicating the investments had a shorter maturity date. And in one instance, a firm salesman allegedly told the county's finance officer to ignore reports describing the risks associated with investing in CMOs.

Had SB 382 been in place when Lewis and Clark County was misled, the county would have had no private remedy to apply against these firms. The county would have been out the money that they ultimately recovered. That's not right.

Montana investors should be aware that this legislation could take from them certain safeguards that protect their pocketbooks. This legislation has been mischaracterized as the way to weed out frivolous law suits that clog our court dockets. While this bill probably does that, it also weeds out legitimate claims by defrauded investors, leaving only actions against unscrupulous issuers and agents that are stupid enough to announce that they knew they were misleading investors.

Two final points on provisions that would hurt consumers: The bill would erect another hurdle to valid

civil actions by requiring extraordinary levels of proof in the complaint that an offender actually knew that a statement was misleading. Regarding certain claims, a fraud victim could be unable to demonstrate the offender's knowledge without the benefit of discovery, then the complaint is required to be dismissed.

The bill also denies victims the ability to move quickly to have their day in court by allowing offenders to stay or delay discovery by filing motions to dismiss and motions for summary judgment.

This simply is an issue of fairness. What it does is it creates a higher hurdle for securities fraud victims to leap -- a higher hurdle than victims involved in frauds in the real estate, banking and insurance industries, for example. Why should a securities victim be required to produce a higher standard of proof, to show that the perpetrator knew that he or she was making a misleading statement? Why should securities fraud victims face a higher standard for discovery?

This is a basic issue of fairness. These broad principles of fairness are applied across the board in our

legal system. But in this bill, we would make it harder for securities fraud victims to make their case. That's wrong.

This bill also is a bad bill for financial services industry professionals and issuers that conscientiously abide by the securities laws of this state. It is a bad bill for our financial markets. It is a bad bill for Montana investors and I urge your vote against it.

Why did prestigious Bear, Stearns get cozy with so many discredited bucket shops?

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 2-21-97
FILE NO. SB 382

Sleazy doings on Wall Street

By Gretchen Morgenson

AN OBSCURE New York City brokerage firm, A.R. Baron & Co., slipped into bankruptcy last July. Brokerage is not the right word. It was a bucket shop. Baron was in trouble with regulators from the moment it opened its doors four years earlier. When it closed, its customers were on the hook for roughly \$22 million. Its owner, a 31-year-old egomaniacal fellow named Andrew Bressman, has filed for bankruptcy. The N.Y. County district attorney's office has convened a grand jury on the A.R. Baron affair.

Just another boiler-room blowup? These outfits come and go, and not much has changed since the days when Robert Brennan and Denver-based Meyer Blinder ravaged and raped small investors. But this debacle was different. In failing, Baron laid bare a corner of the securities industry that is rarely seen but is hugely profitable: processing trades for other firms.

This involves clearing customer trades, processing securities transactions and other paperwork, and providing capital necessary for smaller broker/dealers to conduct their business. A major player in the clearing business is the prestigious, publicly traded brokerage giant Bear, Stearns & Co. Inc. Guess who cleared for Baron? Bear, Stearns Securities Corp., its clearing subsidiary. And guess who figures prominently in the story? Randolph Pace, a notorious bucket-

shop operator of the past, who has been the subject of numerous regulatory actions during his short career in the securities business. Pace co-owned Rooney, Pace Inc. in the 1980s.

Processing of securities transactions was little noticed until 1968, when, amid growing trading, stock exchanges began closing down on Wednesdays so clerks could sort out the mountains of tickets representing customer orders. Volume had simply grown too fast for the then-primitive systems to handle. A number of famous old firms went under—Goodbody & Co., among others. Computers and vast infusions of capital eventually solved the problem.

Because expensive computer systems are required, the clearing business has become concentrated in fewer hands. Most large brokerage firms and banks, such as Merrill Lynch, Smith Barney, Chase and J.P. Morgan, still clear their own customers' trades, but many others do not. Since 1983 the number of clearing firms has declined—from 1,200 to 780—while the number of broker/dealers (also called introducing brokers) has risen from 3,500 to 5,000. Big names in clearing are Pershing, a division of Donaldson, Lufkin & Jenrette; Correspondent Services Corp., a subsidiary of PaineWebber Inc.; and Prudential Securities.

Bear, Stearns' clearing subsidiary is

a big player, with 2,100 customers, up from 725 in 1987. It is so big in this business that it claims to handle 12% of the New York Stock Exchange's volume. Its clearing customers generate more than 100,000 trades every day. A decade ago its daily trades averaged 33,000. Most of Bear's clearing clients are small OTC marketmaker firms, hedge funds and money managers—good customers, solvent and well respected. But then there was Baron. As it turns out, Bear, Stearns clears for other outfits like Baron.

Officials at Bear, Stearns declined to be interviewed for this story. Company spokesperson Hannah Burns says: "Clearing is a very, very proprietary business for us, and we don't want the public knowing about it."

A strange comment. Doesn't the public have a right to know how its trades are handled? Clearing is much more than a routine process of matching the seller of a security with the corresponding buyer. A clearing firm also ponies up significant capital to each of its introducing brokers, allowing them to do business on a relatively small deposit, usually a minimum of \$250,000. However, if a customer fails to pay, it is the introducing broker who gets stuck, not the clearing firm. Nor is the clearing firm on the hook if brokers at one of the introducing firms engage in unauthorized trading or other securities' laws violations. In short, the

BUCKET: JESSIE MCKINNON; HARBORVIEW: STEVEN BOONIS; DOCTRA: IMAGINE; FORBES



clearing firm shares in the profits but takes none of the regulatory heat.

A clearing firm's chief vulnerability is if one of its broker/dealers fails and winds up owed more by customers than what it has in cash. In most cases that risk is modest if the clearing firm keeps a watchful eye on its customers' dealings.

One veteran of the clearing business says: "A clearing firm looks at its customers' numbers every day. The first time trouble shows its head, you stop it immediately." Clearing firms can terminate their agreements with customers at any time, but they usually give the firm a grace period of a month or two to find a new home.

The risk of a firm's failing is, however, far outweighed by the financial rewards of the clearing business. First there's the introducing broker's deposit paid to the clearing firm, which can use the money interest-free. Then there are the fees a clearing firm levies on every transaction an introducing firm makes—called a "ticket charge"—of anywhere from \$10 to \$30 per trade. The clearing firm also charges interest—typically 1% a month—of customer debit balances carried on the clearing firm's books. The interest meter starts ticking the day a trade is done. This is where the real money in clearing is made. Clearing firms like Bear, Stearns also have free use of customers' credit balances.

Last but not least, clearing firms such as Bear demand that an introducing broker's listed equity business—trades in NYSE and Amex stocks—all be funneled to its trading desks. Other firms would pay 2 cents or 3 cents a share for this order flow; Bear gets it for free.

The man running this gold mine at Bear, Stearns is Richard Harriton, 61, an imposing and imperious man who came to the firm in 1979. Reportedly the son of a Brooklyn bakery-supply salesman, Harriton has become a wealthy man as a Bear, Stearns senior managing director. He sits on the firm's Management and Compensation Committee, which decides how many millions of dollars will be parceled out to the company's executives in bonuses each year.

Bear is known for its largesse to

July 17

A.R. Baron settles with NASD, paying \$1.5 million in fines and restitution

July 20

Bear, Stearns begins clearing for A.R. Baron

Aug. 9

Baron underwrites 1.8 million shares of PaperClip Imaging Software—its last hot IPO

Sept. 5

Baron's capital falls below minimum, shuts down for 2 days

Richard Harriton



Randolph Pace

Former brokerage executive; suspended twice by the SEC, twice by the NASD and barred by the New York Stock Exchange

Andrew Bressman

Chief Executive Officer A.R. Baron; former broker with D.H. Blair

Morris Wolfson

Real estate and securities investor; A.R. Baron client

top employees. Last year, for example, Bear, Stearns President and Chief Executive James Cayne made \$20.4 million in compensation; Chairman Alan (Ace) Greenberg got \$18.9 million; Executive Vice President Warren Spector received \$19.5 million. Harriton's compensation was unspecified in the proxy and the annual report, but it was no doubt hefty.

Bear, Stearns' financials don't specify how much its clearing business brings in.

With reason: Why let outsiders in on how lucrative its clearing is? In 1996 Bear produced revenues of \$5 billion, on which it earned \$496 million. Clearing almost certainly contributed to Bear's extraordinary results—up 68% in its most recent quarter, ended December. The firm's stock surged to an alltime high of

\$31.75.

All Wall Street firms have personalities; Bear's is scrappy and entrepreneurial. Bear executives are encouraged to behave as aggressive and enterprising sole proprietors. If they do so successfully, they will get their reward in the form of a bigger bonus.

Running one of Bear's biggest profit centers makes Harriton a towering figure there. His contributions to the firm's bottom line make it likely that he is autonomous, left alone to manage his fiefdom. He reportedly has introduced himself to prospective clearing customers by saying: "I run the most profitable division of Bear, Stearns and I'm the most powerful man on Wall Street in clearing." It is widely assumed that he runs his show without much input from the top boss, Alan Greenberg.

The crash of A.R. Baron

Less than a year after Bear, Stearns began clearing once again for Baron, the firm was bankrupt. There were many signs along the way that the firm was in perilous condition, yet Bear continued to clear Baron's trades.

Sept. 12

Fiduciary Management Services learns of unauthorized trading by Baron; notified, Bear sloughs it off

Oct. 13

Baron's capital again falls below minimum, ceases operations temporarily; Bear later puts \$1.1 million of its capital into Baron

May 29

SEC orders Baron to cease and desist its operations

July 3

Baron files bankruptcy

1997

January
Grand jury convenes in A.R. Baron case in NYC

What is so special about Bear, Stearns' clearing work? Harrington knows that what he is selling is not just his firm's back-office processing: All clearing firms have sophisticated systems and most charge less to perform these services than Bear. What Harrington is selling—especially to the small and dubious firms—is respectability. If Bear's famous name appears on the trade confirmation or monthly statement as the clearing firm, who can doubt that his money is in safe hands?

Even before the Baron debacle, some of the biggest Wall Street flame-outs had been clearing customers of Bear, Stearns Securities Corp.

One of Bear, Stearns' first clearing customers was Rooney, Pace Inc., a notorious stock manipulator firm shuttered by regulators in 1987. Former co-owner, Randolph Pace, is a close friend of Harrington and regularly brings new clearing customers to Bear.

Another clearing customer in Bear, Stearns' recent past was D. Blech & Co., the investment firm run by

David Blech that specialized in biotechnology stock underwritings. D. Blech's failure in 1994 reportedly left \$200 million in investor losses and clearing firm Bear on the hook for \$10 million.

Bear, Stearns also cleared for Stratton Oakmont from 1990 until early 1994, when Bear bounced the firm amid bad press about its boiler-room tactics. Stratton was effectively shut down by regulators last month.

Right now Bear, Stearns is the clearing firm for at least 15 brokerages that are, if not full-fledged bucket shops, close to it. (See chart, p. 118.) These include Sterling

Foster, charged last September in a \$53 million fraud complaint by the NASD for manipulating stock prices of newly issued stocks;

ment's broker, Richard Simone, had recently left Alex Brown & Sons for a brokerage firm Barry did not know—A.R. Baron & Co. Although Barry trusted Simone, he also says he felt comfortable with Simone's shift to Baron because of the Bear, Stearns connection.

Barry didn't rest easy for long. Immediately after Baron announced its new clearing arrangement with Bear, Stearns, Barry began receiving confirmations of trades in Fiduciary's account that he had never authorized Simone to do, stocks that bore no relation to the conservative securities Barry generally dealt in.

Unable to get these \$2 million trades reversed by Simone, or A.R. Baron's owner, Andrew Bressman, Barry went to Bear, Stearns for help in canceling the unauthorized trades. Even though Barry notified Bear of the unauthorized trading within ten days, as required by New York State law, Bear, Stearns moved not one inch to rescind the trades. Bear advised Barry to take it up with Baron, claiming to be "just the clearing firm."

Barry never got satisfaction from Baron. As it turned out, Barry was one of many Baron customers victimized by the unauthorized trading. According to the Securities & Exchange Commission, since its very first days A.R. Baron had engaged in egregious sales practice abuses, including rampant unauthorized trading in customer accounts, and abusive sales practices involving stocks that it underwrote.

In industry parlance, Baron was a firm that employed a "no net sales" policy. That meant Baron's brokers would allow their clients to sell a position in one of their so-called house stocks only if another of the firm's clients placed orders to buy the shares. In short, a Baron stock couldn't drop because the broker wouldn't permit trades at lower prices. This had the effect of propping up Baron's special stocks, for a while at least.

As Barry discovered, Fiduciary's \$2 million was used to buy shares in a Baron house stock—Cypros Pharmaceutical—that somebody else was likely selling. When the firm went bankrupt months later, Fiduciary

Lew Lieberbaum & Co., of Garden City, N.Y.; Josephthal Lyon & Ross Inc. of New York City.

Does having Bear as a clearing firm give cachet to smaller firms? Just ask Ian Barry, investment manager of Fiduciary Management Services, developers of Grand Bahama Island. In July 1995, Barry learned that the broker handling his client's \$2 million account was moving its back-office business from Denver-based Hanifen, Imhoff to industry giant Bear, Stearns. "I felt we were in excellent hands," says Barry, from his office in Bermuda. "Bear, Stearns was a household name."

A global reputation was important to Barry because Fiduciary Manage-

Management was left with around \$2.6 million in losses.

Fiduciary Management, in suing Bear, is represented by Lewis Lowenfels, a highly respected securities lawyer in New York City whose writings have been cited by the U.S. Supreme Court. Says Lowenfels: "The Fiduciary Management case goes to the heart of the legal responsibilities of clearing firms in relation to introducing brokers." In other words, in keeping Baron alive for almost a year, Bear, Stearns enabled the firm to harm investors with its fraudulent sales practices. As a result, Bear was perhaps more than just a clearing firm.

Bear, Stearns disavows responsibility for Fiduciary's losses, even though the firm was notified of the unauthorized trades almost immediately after they were placed.

Bear itself lost money in the Baron mess; it is identified in Baron filings as a creditor of the firm in the amount of \$2.3 million. Oddly, Bear has not filed a claim with the bankruptcy court, perhaps trying to minimize its link to the disaster.

Why would Bear, Stearns risk its reputation by dealing for a firm like Baron? On July 17, 1995, for example, A.R. Baron settled a case with the NASD, agreeing to pay the regulator \$1.5 million in fines and restitution; Baron's principal, Bressman, paid \$35,000 to settle charges that he and the firm executed trades for customers at unfair and unreasonable prices. Three days after this public shaming, Bear, Stearns agreed to begin clearing for Baron.

Until the firm finally failed in July 1996, Baron's capital position several times fell below the minimum required by regulators. This means Baron could not conduct business until it put up more capital. On several occasions Baron simply closed its doors. But Bressman & Company would always manage to rustle up the necessary capital somewhere. At a crucial point in the fall of 1995, Bear put up \$1.1 million of its own capital to float Baron back up to minimum levels.

All the while, Bear was receiving customer complaints from folks like Ian Barry. Bear continued to clear for

Baron as SEC and NASD regulators were at Baron auditing and investigating continually throughout 1995. Finally, Baron was bleeding money: During the month of October 1995, for example, Baron had \$5 million in losses and unpaid-for trades. Bear continued to clear.

The question of why Bear was involved with Baron gets even more curious when you discover that Bear had cleared for Baron once before, in 1992. Bear ended its clearing relationship with Baron that summer during an underwriting that Baron had in the works—Cypros Pharmaceutical. Harrington told Baron to look around for another clearing firm because Bear was afraid the Cypros deal would unwind and end up with a stock trading below the offering price. In short, Bear was worried Baron could not support the shares in the aftermarket. Baron found another clearing firm, Adler Coleman.

Unfortunately for Baron, Adler Coleman went bankrupt in 1995, so once again Baron needed a clearing firm. It landed at Hanifen, Imhoff for roughly three months, but was kicked out.

Why did Bear now open its doors to Baron? The question is especially compelling when you realize that because of the nature of Baron's business, Bear wasn't really making all that much money on its clearing business.

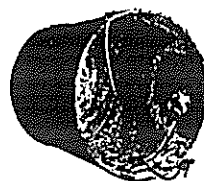
Remember the variety of ways a clearing firm makes money. The most profitable is charging interest on the firm's customer debits—typically a result of stocks bought on margin. But Baron had no customer debits—it was a firm, as many bucket shops are, that specialized in stocks that are not marginable. Baron's customers had no margin positions.

Neither did Baron's clients typically have credits in their accounts—cash resulting from a liquidated stock position.

Another interesting fact: Harrington's number-two man on the operations side at Bear, Stearns Securities Corp., Peter Murphy, wanted to throw Baron out. Murphy was overruled by Harrington.

Why would Harrington deal with a clearly disreputable bucket shop?

A cadre of clearing clients



A.R. Baron & Co.
New York City
Defunct; \$22 million
in customer losses;
subject of grand jury
investigation

Corporate Securities Group, Inc.

Boca Raton, Fla.

Pending NASD complaint, 1996; NASD
censure and fine, 1995



D. Blech & Co.

New York City

Defunct; failure said to
have caused losses
of \$200 million—\$10
million at Bear, Stearns

**Some of Wall Street's biggest
flameouts cleared through
Bear, Stearns. Other firms,
still in business, have had
troubles with the regulators.**

Was it as a favor to Morris and Abraham Wolfson, sons of New York real estate magnate Zev Wolfson—developer of One State Street Plaza? Morris Wolfson has sizable accounts at Bear, Stearns. He was also a big player in Baron's house stocks. And Wolfson Investment had bought \$400,000 worth of A.R. Baron's privately issued convertible preferred stock. As a special client of Baron he would be entitled to allotments of hot issues before the suckers were invited in.

Bressman told people that the Wolfsons asked Harrington to take on

Law Lieberman & Co.
Arden City, N.Y.
 Our censures and fines
 by NASD since 1992.
 Subject of many
 customer arbitrations

Stratton Oakmont
Inc.
Lake Success, N.Y.
 Defunct; notorious for
 boiler-room tactics.
 Effectively shut down

Noble International
Investments, Inc.
Boca Raton, Fla.
 Lost three arbitrations
 since 1995, selling
 unsuitable investments

Bear, Stearns
Securities Corp.

Sterling Foster & Co.
Melville, N.Y.
 NASD alleged \$53 million
 fraud in 1996 market
 manipulation case

Rooney, Pace Inc.
New York City
 Defunct; one of Bear,
 Stearns first clearing
 customers, the firm
 was shut by
 regulators in 1987

Josephthal Lyon &
Ross Inc.
New York City
 Numerous arbitration
 cases, two NASD cen-
 sures and fines in 1996

Baron as a clearing firm again. Bressman told people that Harrington asked the Wolfsons if the family would guarantee the firm. The family declined, but Harrington took Baron back anyway.

Morris Wolfson, 38, is infamous as co-owner of a Harlem apartment building that collapsed in 1994, killing three people. Wolfson was not found liable for the deaths.

But Wolfson was not Harrington's only tie to the Baron firm. After taking Baron back into the Bear, Stearns fold, Harrington introduced Bressman to Harrington's pal, barred

manipulator Randolph Pace. Bear, recall, cleared for Rooney, Pace before it went out of business in 1987. Pace didn't return a reporter's phone call seeking comment.

Harrington apparently isn't discriminating when it comes to picking friends. Baron's president, Andrew Bressman, has also been chummy with Harrington. Bressman has dined often with the Bear managing director, taking him to New York Knicks basketball games, where Bressman's front row seats let him and his guests rub shoulders with celebrities like film director Spike Lee.

JOSH MCHUGH

A person intimately familiar with the clearing business at Bear, Stearns tells FORBES that more than favors were involved. The source insisted on strict anonymity but is clearly knowledgeable about the situation.

Here, according to the source, is what happens: A bucket shop that clears through Bear has a hot underwriting in the works. On the day the stock begins trading, as many units or shares as are needed to generate a \$100,000 profit are placed in a so-called nominee account at another brokerage firm. A nominee account is an account that carries a fictitious name. Our source charges that Harrington was the beneficiary of trades of this sort.

A. R. Baron was not the only sleazy outfit to clear through Bear, Stearns. Another Bear, Stearns clearing customer is Sterling Foster, the penny-stock outfit that the NASD sued for \$53 million in a fraud case last fall. A company that Sterling Foster brought public last year, called Embryo Development Corp., lists Matthew L. Harrington, 31, as its chief financial officer. He is said to be Richard's son.

The last hot stock underwriting sponsored by A.R. Baron came on Aug. 9, 1995: 1.8 million shares at \$5 in a company called PaperClip Imaging Software, Inc. Like most hot Baron issues, PaperClip rose on its first day of trading, to almost \$8. Those in on the offering who sold before the close of trading reaped handsome gains.

Normally, with this kind of offering, the first allotments go to favored customers and insiders. But with PaperClip, large numbers of the shares were assigned not to the clients who had been promised them, but to overseas entities—suspected to be nominee accounts.

The presumption is that Baron insiders and their friends were the real owners. An obvious manipulation, PaperClip is now trading at less than 50 cents.

FORBES gave Bear, Stearns plenty of time to respond to our allegations. Bear, Stearns' only comment was: "Pending litigation prevents us from commenting."

The whole situation stinks.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. #10
DATE 2-21-97
CASE NO. SB 382

Testimony presented 2-21-97 regarding SB 382 by Irene H. Theurer representing AARP.

This legislation would create a safe harbor for the seller only not for the buyer.

It places the burden of proof of wrong doing solely on the buyer.

Senior citizens, in most instances, would not have the funds to sue in case of wrong doing. With the delaying tactics which can be used in law suits, a lot of us would not live long enough to see our law suit actually come before a judge.

AARP's policy is to use caution against frivolous lawsuits. However, standards now allow a judge to determine if a lawsuit is frivolous.

We strongly urge that you do not give a "do pass" recommendation on this legislation.



SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 21, 1997

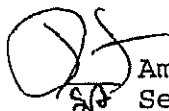
MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill 382 (first reading copy -- white), respectfully report that Senate Bill 382 be amended as follows and as so amended do pass.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 3, line 21.
Following: first "security"
Insert: "that is traded on a national securities market"
2. Page 6, line 5.
Following: "(4)"
Insert: "(a)"
3. Page 6, line 9.
Strike: "(a)"
Insert: "(i)"
4. Page 6, line 12.
Strike: "(b)"
Insert: "(ii)"
5. Page 6, line 13.
Strike: "(i)"
Insert: "(A)"
6. Page 6, line 15.
Strike: "(ii)"
Insert: "(B)"
7. Page 6, line 18.
Strike: "(5)"
Insert: "(b)"
8. Page 6, line 22.
Strike: "(a)"
Insert: "(i)"

 Amd. Coord.
Sec. of Senate

411645SC.SRF

**MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE**

ROLL CALL

DATE _____

2-21-97

[illegible]

SEN:1995
wp.rollcall.man
CS-09

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 2/21/97 BILL NO. SB 382 NUMBER 1

MOTION: Bishop DPAA

NAME	AYE	NO
SUE BARTLETT		✓
AL BISHOP	✓	
STEVE DOHERTY		✓
SHARON ESTRADA		✓
MIKE HALLIGAN		✓
RIC HOLDEN	✓	
REINY JABS	✓	
WALT MC NUTT	✓	
LORENTS GROSFIELD, VICE CHAIRMAN	✓	
BRUCE CRIPPEN, CHAIRMAN	✓	
	6	4

SEN:1995
wp:rlclvote.man
CS-11

DATE Feb 21, 1997

SENATE COMMITTEE ON

Judiciary

BILLS BEING HEARD TODAY:

SB 382, 383, 385

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Gordon Morris	MMPCo	SB 382		X
Dennis Bapino	WILSON Co	SB 383	X	
Hamilton L. Duke	City of ^{WILSON} Alper	SB 383	X	
Ken Dovo	BUGS, P.D.	SB 383	X	
Jeff Beckett	Gr. Falls PD	SB 383	X	
By RAVOTZ	MISSOURI PD	SB 383	X	
Scott Church	NE LU	383	[Info]	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE Feb 21, 1997
 SENATE COMMITTEE ON Judiciary
 BILLS BEING HEARD TODAY: SB 382, 383, 385

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<u>John J. Sullivan</u>	<u>SEMITOOL</u>	<u>SB 382</u>	<u>-</u>	
<u>John Dydys</u>	<u>Smith & Co.</u>	<u>SB 382</u>	<u>-</u>	
<u>John Connor</u>	<u>Dept of Justice</u>	<u>383</u>	<u>✓</u>	
<u>Jan Rehberg</u>	<u>Semitool</u>	<u>SB 382</u>	<u>"</u>	
<u>Allan Kargell</u>	<u>"</u>	<u>"</u>	<u>"</u>	
<u>James H. Thum</u>	<u>AARP</u>	<u>382</u>		<u>✓</u>
<u>Dick Patterson</u>	<u>MT & Citizens</u>	<u>382</u>		<u>✓</u>
<u>Mark Rube</u>	<u>S.A.O</u>	<u>382</u>		<u>✓</u>
<u>Russell B. Hill</u>	<u>MT Trial Lawyers</u>	<u>SB 382</u>		<u>✓</u>
<u>JOHN CADDY</u>	<u>MT BANKERS</u>	<u>SB 382</u>	<u>✓</u>	
<u>Ken Williams</u>	<u>MPC</u>	<u>SB 382</u>	<u>✓</u>	
<u>Chris Person</u>		<u>SB 385</u>	<u>✓</u>	
<u>TIM SHANKS</u>	<u>MT Police Prot Assn</u>	<u>SB 383</u>	<u>X</u>	
<u>Steve Browning</u>	<u>Pacific Corp</u>	<u>382</u>	<u>✓</u>	<u>amendment</u>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 25, 1997, at
7:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Absent: Rep. Chris Ahner
Rep. William Boharski until 8:00 AM
Rep. Diana Wyatt until 8:15 AM
Rep. Liz Smith until 7:30 AM

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 289, SB 329, SB 382
POSTED 3/6; 3/13 AND 3/20
Executive Action: HB 163 DO PASS AS AMENDED
SB 308 BE CONCURRED IN

Proponents' Testimony:

PROF. ELAINE GAGLIARDI, Montana Bar, Montana School of Law
{Tape: 2; Side: A; Approx. Time Count: 1.3}

Questions From Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Count: 13.3-Tape 2; Side B; 11.0}

Closing by Sponsor: SEN. HALLIGAN

{Tape: 2; Side: B; Approx. Time Count: 11.1}

HEARING ON SB 289

Opening Statement by Sponsor: SEN. DOROTHY ECK

{Tape: 2; Side: B; Approx. Time Count: 13.1}

Proponents' Testimony:

GENE KISER, Montana Board of Crime Control
{Tape: 2; Side: B; Approx. Time Count: 16.9}

GLORIA EDWARDS, Gallatin County Victim/Witness Program
{Tape: 2; Side: B; Approx. Time Count: 18.1} EXHIBITS 3-3B

MIKE CRONIN, Department of Corrections
{Tape: 2; Side: B; Approx. Time Count: 22.1}

Opponents' Testimony:

BOB GILBERT, Montana Magistrates Association/Montana Tax
Collectors' Association
{Tape: 2; Side: B; Approx. Time Count: 22.9}

KAREN BRYSON, Helena City Court
{Tape: 2; Side: B; Approx. Time Count: 27.8; Comments: Tape
broke and part of testimony was lost while replacing it.}

Questions From Committee Members and Responses:

Tape: 3; Side: A; Approx. Time Count: 0.8 - 13.2}

Closing by Sponsor: SEN. ECK

{Tape: 3; Side: A; Approx. Time Count: 12.4}

HEARING ON SB 382

Opening Statement by Sponsor: SEN. JOHN HARP

{Tape: 3; Side: A; Approx. Time Count: 15.0; Comments: CHAIRMAN
CLARK limited testimony to 30 minutes per side.}

Proponents' Testimony:

JANICE REHBERG, Crowley Law Firm/Semi-Tool
{Tape: 3; Side: A; Approx. Time Count: 24.8}

EXHIBIT 4

ALLAN KARELL, Semi-Tool
{Tape: 3; Side: B; Approx. Time Count: 0.1}

EXHIBITS 5-5B

JOHN SULLIVAN, Chief Financial Officer, Semi-Tool
{Tape: 3; Side: B; Approx. Time Count: 13.4}

MOE WOSEPKA, Kalispell Chamber of Commerce
{Tape: 3; Side: B; Approx. Time Count: 17.2}

DAVID DENNIS, D. A. Davidson
{Tape: 3; Side: B; Approx. Time Count: 19.0; Comments: This
witness did not sign in.}

JOHN OITZINGER
{Tape: 3; Side: B; Approx. Time Count: 22.2}

TOM HARRISON, CPA Society
{Tape: 3; Side: B; Approx. Time Count: 23.6; Comments: This
witness did not sign in.}

Opponents' Testimony:

BETH O'HALLORAN, State Auditor's Office, Securities Division
{Tape: 3; Side: B; Approx. Time Count: 25.0 - Tape 4; Side A;
5.2; Comments: REP. WYATT assumed the chair.}

PAT MC GARRELL, Darby
{Tape: 4; Side: A; Approx. Time Count: 5.3}

IRENE THEURER, AARP
{Tape: 4; Side: A; Approx. Time Count: 8.7}

EXHIBIT 6

VERN BERTELSEN, Montana Senior Citizens' Association
{Tape: 4; Side: A; Approx. Time Count: 11.0}

EXHIBIT 7

PAUL STAHL, Lewis and Clark County
{Tape: 4; Side: A; Approx. Time Count: 13.5}

RUSSELL HILL, Montana Trial Lawyers Association
{Tape: 4; Side: A; Approx. Time Count: 17.2}

LINDA DEOLA
{Tape: 4; Side: A; Approx. Time Count: 28.4}

Questions From Committee Members and Responses:

{Tape: 4; Side: A; Approx. Time Count: 29.8-Tape 5; Side A; 13.0;
Comments: CHAIRMAN CLARK resumed the chair.}

Closing by Sponsor: SEN. HARP

{Tape: 5; Side: A; Approx. Time Count: 13.4}

Motion: REP. MC GEE moved to adjourn. The meeting was adjourned.

EXHIBIT 4
DATE 3/25/97
SB 382

INFORMATION POINTS
SB382
REVISE PRIVATE SECURITIES LITIGATION LAWS
(March 24, 1997)

A. PURPOSES OF THE BILL

Senate Bill 382 seeks to incorporate a number of the provisions enacted by the United States Congress in 1995 relating to the federal securities laws. These provisions were designed to remove the incentives to file speculative and frivolous legal actions against publicly traded companies. The federal act was the culmination of a process that began in 1991 when the American Institute of Certified Public Accountants began to develop bipartisan support for legislation to curb frivolous securities legislation. The Act was adopted by the Senate by a vote of 65 to 30, in which both Montana Senators voted in favor of the bill, and passed the House on a vote of 320 to 102. Despite the overwhelming support for the provisions, President Clinton vetoed the bill. Congress voted to override the veto 319 to 100 in the House and 68 to 30 in the Senate.

Senate Bill 382 is introduced for several reasons:

1. To prevent forum shopping by plaintiff's attorneys who cannot meet the federal requirements;
2. To provide consistency for those Montana corporations which are publicly traded on national securities markets;
3. To protect such corporations and their shareholders from the financial drain resulting from the expenditure of resources on frivolous suits; and
4. To insure that any awards bear a reasonable relationship to the culpability of the defendants and to plaintiff's actual loss.

B. SUMMARY OF THE BILL

Section 1: Requires that a plaintiff must specify each statement alleged to have been misleading, why the statement is misleading and identify with particularity the facts which give rise to a strong inference that the defendant acted knowingly. (Adopts 2nd Circuit pleading standard.) It also requires the court to postpone discovery if a motion to dismiss is filed, unless the court finds that discovery is necessary to preserve evidence or prevent undue prejudice, and clarifies that the

plaintiff must prove the alleged act or omission caused the plaintiff's alleged damages.

Section 2: Requires the court to make specific findings as to whether the action complies with provisions of Rule 11 of the Montana Rules of Civil Procedure which requires that an attorney certify that any complaint or other document filed with the court is, to the best of the lawyer's knowledge, warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and requires the court to impose sanctions if the court finds that a party or attorney has violated the provisions of Rule 11.

Section 3: Specifies that upon request of a defendant the judge will submit a written question to the jury on the issue of whether the defendant acted knowingly with respect to any alleged misstatements.

Section 4: Establishes a 90-day period for calculating the "market price" of a security, instead of relying on one particular day, thus taking into account normal fluctuations in the market.

Section 5: Establishes "safe harbor" provisions similar to those adopted in federal courts which allow a business to make "forward-looking statements," concerning the business, even if the statements turn out to be untrue, provided (1) the person making the statement does not know that the statement is false at the time it was made, (2) the statement was identified as a forward-looking statement at the time it was made and accompanied by "meaningful cautionary statements" identifying factors which could make the actual results differ from the projected statements, or (3) any misstatement was immaterial.

Section 6: Prohibits a person from receiving money for assisting an attorney to find a client to file a securities action.

Section 7: Deleted because Montana Securities Commissioner does not bring disgorgement actions.

Renumbered Section 7: Provides that anyone who knowingly assists a person in violating provisions of the securities act shall be considered to be in violation of the same provisions.

Renumbered Section 8: Provides that a person in certain actions can only recover for the depreciation in value of the security resulting from an alleged misstatement.

Section 10: Deleted to avoid conflict with general legislation regarding joint and several liability.

Renumbered Section 9: Allows Montana Insurance Commissioner to adopt rules regulating private actions under Montana securities laws.

Sections 12 and 13: Deleted because unnecessary once Section 10 deleted.

Renumbered Sections 10, 11 and 12: Codification instructions severability clause.

CROWLEY, HAUGHEY, HANSON, TOOLE & DIETRICH
ATTORNEYS AT LAW

JANICE L. REHBERG
PARTNER

HELENA OFFICE:
IBM BUILDING
100 NORTH PARK AVE., STE. 300
P.O. BOX 797
HELENA, MONTANA 59624
TELEPHONE (406) 449-4165
FAX (406) 449-5149

BILLINGS OFFICE:
500 TRANSWESTERN PLAZA II
490 NORTH 31ST STREET
P.O. BOX 2529
BILLINGS, MONTANA 59103
TELEPHONE (406) 252-3441
FAX (406) 252-5292

EXHIBIT 5
DATE 3/25/97
SB 382

AMENDMENTS
SB382
March 25, 1997

1. Page 3, line 14.
Strike: subsection (1) in its entirety
Renumber: subsequent sections
2. Page 4, line 24 through line 25.
Strike: Subsection D it its entirety
Renumber: subsequent sections

EXHIBIT 5A
DATE 3/25/97
SB 382

AMENDMENTS
SB382
March 25, 1997

3. Page 8, line 10.
Following: "part"
Insert: "in which the plaintiff alleges that the defendant made an untrue statement or omitted a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading,"
Following: "if"
Insert: "the person who offered or sold the security proves"

EXHIBIT 5B
DATE 3/25/97
SB 382

AMENDMENTS
SB382
March 25, 1997

4. Page 14.
Following: line 15
Insert: **Section 12. Applicability.** [Sections 1 through xx]
do not apply to any private action arising under this
chapter commenced before and pending on the date of
enactment of this Act; provided, however, that any legal
precedents embodied in this act may be applied by the courts
notwithstanding this section.

EXHIBIT 6
DATE 3/25/97
SB 282

612 Sixth Street East
Kalispell, MT 59901
(406) 756-1854

March 20, 1997

Standing Judiciary Committee Members
House of Representatives
Capitol Station
Helena, MT 59620

Ladies and Gentlemen:

PLEASE VOTE NO ON SENATE BILL 382!

We are retired, age 66 and 70. We have chronic heart disease, and between us have had three heart surgeries.

We are victims of an investment scam in Kalispell.

In December of 1990, after four September and October hospitalizations for Sarah Hatfield for congestive heart failure and pneumonia, trust was placed in the advice of a 45 year friend and officer at a locally owned bank who sent us to the investment representative within the bank.

We stated to the banker "friend," as well as the investment representative, we needed advice on how to invest proceeds from our California house sale to supplement a teachers retirement plan. We wanted low risk investments, and guarantee of principal. Our health risks were disclosed. All our money had been invested in our two children's college educations previously, and we did not know facts to consider before investing, and were not so advised.

\$80,000 of investments were sold, and high interest rates guaranteed. High risks and high commissions were not revealed. It was not revealed the sales representative was not part of the bank.

A stressful family situation necessitated buying family members out of a historic home in January, 1992. Investment advice was again sought from the investment representative within the "bank" on how we could achieve this goal on the monthly income we had, and if mortgaging our paid for Kalispell home was wise at our ages, and health.

Not only were we advised it was a wise move to mortgage our home through the "bank," but he would help set up the loan. The same day mortgage papers were signed, we were sold a second \$15,000 limited partnership investment. High risk and commissions were again not revealed.

Standing House of Representatives Judiciary Committee
PLEASE VOTE NO ON SENATE BILL 382
March 20, 1997
Page 3

A collusion exists between the "bank" and the investment company. The "bank" sends customers to the investment representative within the "bank", and the investment representative sells high risk, high commission investments, that greatly benefit the "bank," the sales rep, and investment company. Then investors are referred back to the "bank" for loans. BINGO! In short order foreclosure!

Montana legislators have allowed powerful bank, insurance, corporation and investment lobbyists to create these legal loopholes they hide behind.

The process to recover losses is already cumbersome, costly and formidable. Sales representatives know just how long to conceal bad investments so statutes can run. Flathead County does not have securities attorneys, further burdening the investor to seek counsel long distance. Many investors are retired, elderly, or in poor health, and cannot bear the added stress, and so they give up.

Forty-two Flathead Valley investors lost in these two limited partnerships sold by the "bank" investment sales representative. We filed our complaint June 14, 1995. One other party filed a complaint in December, 1995, and were paid off in May, 1996. We have been offered no settlement.

For two years we have had no choice but to risk what little money we have left. We have spent over \$11,000 so far to pursue our claim, and arbitration is not until this April 1st and 2nd in Seattle.

The road to recovery is already unbearable. Our retirement plans have been stopped cold. We can't travel, we can't visit our children or grandchildren, who live outside Montana. The long term health effects are yet to be known.

Senate Bill 382 is so restrictive the common citizen will lose the right that every American citizen should have ---- to HAVE THEIR DAY IN COURT.

Big companies already have every advantage. Senate Bill 382 further distorts the level playing field for the common person.

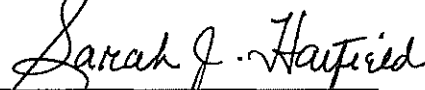
PLEASE, HOUSE JUDICIARY COMMITTEE, HELP TO SAVE THE COMMON CITIZEN, INSTEAD OF THE BIG CORPORATIONS.

Standing House of Representatives Judiciary Committee
PLEASE VOTE NO ON SENATE BILL 382
March 20, 1997
Page 4

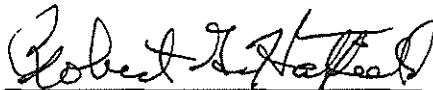
House Committee, you all may very well be in the same position someday we now find ourselves, or perhaps it might be your parents --- and thus your lost inheritance!

PLEASE VOTE NO ON SENATE BILL 382.

Respectfully submitted,



SARAH J. HATFIELD



ROBERT G. HATFIELD

EXHIBIT 7
DATE 3/25/97
SB 382

**TESTIMONY BY DICK PATTISON, PRESIDENT
MONTANA SENIOR CITIZENS ASSOCIATION
IN OPPOSITION TO SENATE BILL 382**

Mr. Chairman, members of the committee:

For the record, I am Dick Pattison, President of the Montana Senior Citizens Association. Thank you for this opportunity to testify. I am here today in opposition to SB 382. I ask you first to remember this really is not about corporations, but about people.

In Congress similar bills started out as a means to protect companies from lawsuits being filed because their stock prices unexpectedly plunged.

This bill is of particular concern to Montana seniors because seniors are the single largest group that is victimized by fraud and SB 382 is particularly not senior friendly.

Its 12 pages of legal requirements and definitions create far too many blocks to an early resolution of a fraud case. Seniors are faced with the probability of their case dragging on forever, ultimately facing death without ever attaining justice. It is filled with means for delaying discovery, which often is the key to proving a victim's case.

This measure is billed as companion legislation to the bill passed by Congress. Had that legislation been law when Charles Keating and others were looting the Savings & Loan industry, those thousands of S&L customers would have lost all but \$16 million of the \$262 million they had invested. Nearly all of that money was retirement funds. We all should be appalled.

It is an unnecessary bill. Judges already have the authority to throw out frivolous suits.

A study by Baruch Lev, a professor at the University of California at Berkeley, looked at public companies whose stock prices dropped more than 20 percent in the five days around the time of a disappointing earnings report. That happened 589 times during the two-year study period, but suits were filed against only 20 companies. Compared with similar firms where no lawsuit was filed, the sued firms tended to put out rosy statements just before releasing the bad earnings report. Firms that weren't sued tended to put out more sober reports around the time of the earnings report. This certainly undermines the claim that companies are bombarded with lawsuits when their stock goes down.

This bill has a "safe harbor" clause that will let securities sellers get away with misleading, even reckless statements. This provision in particular bothered Arthur Levitt, Jr., chairman of the Securities and Exchange Commission, who said at the time Congress passed the federal bill, "The law should not protect persons who make material statements they know to be false or misleading."

Here is what is wrong with this so-called reform:

- * It will impose financial requirements on victims, limiting their rights before they can sue, a type of "financial means testing." A new concept in American law, this would blatantly discriminate against small shareholders.

- * Should you lose a class-action suit you might have to pay the legal fees for the other side. Psychologically, that could stop you from suing no matter how badly you have been burned.

- * Currently, it's OK for a company to make a reasonable projection even if it doesn't come true. But a company can be held liable for an unreasonable projection that misleads investors. If this bill becomes law, companies could get away with misleading, even reckless statements while bailing out and selling their own stock.

We, the people come before you, the legislators we elected to represent and protect us, and ask that you insure that the miscreants, not the victims, are punished. Please kill SB 382.

Thank you for this opportunity to speak.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3/25/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	8:15 ✓	✓	
REP. CHRIS AHNER	✓	✓ ✓	
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	8:45 ✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	8:15 ✓	✓	
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	7:30 ✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 27, 1997,
at 8:30 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Hanson was excused until 10:00 AM.

Members Absent: Rep. Ahner was absent until 12 noon.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Executive Action:

TABLED: SB 178, SB 289, SB 320, SB 382
BE CONCURRED IN: SB 201, SB 329, SB 383
BE CONCURRED IN AS AMENDED: SB 369,
SB 314, SB 263, SB 219, SB 283
SB 110 TO RECONSIDER - FAILED

Motion/Vote: REP. BOHARSKI moved SB 263 BE CONCURRED IN AS AMENDED. The motion carried 19 - 0. REP. AHNER was absent for the vote. REP. HANSON will carry SB 263.

EXECUTIVE ACTION ON SB 369

Motion: REP. TASH moved SB 369 BE CONCURRED IN. EXHIBIT 4
{Tape: 3; Side: A; Approx. Time Count: 13.5}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 14.1 - 15.9}

Motion: REP. KOTTEL moved to amend SB 369. EXHIBIT 5
{Tape: 3; Side: A; Approx. Time Count: 16.1}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 20.0; Comments: .}

Vote: The motion carried 18 - 1; REP. WYATT voting no. REP. AHNER was absent for the vote.

Motion: REP. BOHARSKI moved SB 369 BE CONCURRED IN AS AMENDED.

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 25 - end of side A;
Comments: At 19.8 on the tape, REPS. WYATT and KOTTEL made
statements for the record regarding SB 369}

Vote: The motion to concur in SB 369 carried 19 - 0. REP. AHNER was absent for the vote. REP. KOTTEL will carry SB 369.
{Tape: 3; Side: B; Approx. Time Count: 0.1}

EXECUTIVE ACTION ON SB 382

Motion: REP. MC GEE moved SB 382 BE CONCURRED IN.
{Tape: 3; Side: B; Approx. Time Count: 2.0}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 2.8}

Motion: REP. ELLINGSON moved to amend SB 382.
{Tape: 3; Side: B; Approx. Time Count: 3.5}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 3.6-end of Tape 3; Side B}

Motion/Vote: REP. BOHARSKI moved a substitute amendment to strike the word, "or" at the end of line 15 on page 6 and insert the word, "and." The motion carried 17 - 0; REPS. AHNER, TASH

and MOLNAR were absent for the vote and did not leave proxies for amendments. {Tape: 4; Side: A; Approx. Time Count: 0.1}

Motion: REP. BOHARSKI moved SB 382 BE CONCURRED IN AS AMENDED.
{Tape: 4; Side: A; Approx. Time Count: 2.0}

Discussion:
{Tape: 4; Side: A; Approx. Time Count: 2.5 - 9.0}

Motion: REP. ANDERSON moved to amend SB 382. EXHIBIT 6
{Tape: 4; Side: A; Approx. Time Count: 9.2}

Discussion:
{Tape: 4; Side: A; Approx. Time Count: 11.4 - 14.5; Comments: REP. ELLINGSON requested (and CHAIRMAN CLARK so ruled) that a lobbyist for this bill, Ms. Rehberg, remove herself from where she was seated adjacent to the table and that discussions being held with members of the committee be conducted elsewhere.}

Discussion:
{Tape: 4; Side: A; Approx. Time Count: 14.6; Comments: REP. KOTTEL began reading into the record a list of opponents to this bill. REP. McGEE objected to the reading of the list of opponents since they were not introduced during public testimony, CHAIRMAN CLARK so ruled and the written list was submitted as an exhibit.} EXHIBIT 7

Discussion:
{Tape: 4; Side: A; Approx. Time Count: 16.0; Comments: REP. ANDERSON requested testimony from the Securities Division representative of the State Auditor's Office, Ms. O'Halloran. REP. WYATT objected to allowing Ms. O'Halloran's comments on the amendments because she felt the need for the bill was unclear and; REP. BOHARSKI commented on the need for the clarification of the amendments and then REP. WYATT withdrew her objection. Ms. O'Halloran was allowed to answer questions from committee members. REP. HURDLE's request for Ms. O'Halloran's opinion on the bill was ruled out of order.}

Vote: The motion to amend according to Exhibit 6 carried 18 - 0. REPS. AHNER, TASH and MOLNAR were absent for the vote and did not leave proxies for amendments.
{Tape: 4; Side: A; Approx. Time Count: 26.0}

Motion: REP. ANDERSON moved to amend SB 382. EXHIBIT 8
{Tape: 4; Side: A; Approx. Time Count: 26.6}

Discussion:
{Tape: 4; Side: A; Approx. Time Count: 27.9}

Vote: The motion carried 13 - 5; REPS. HURDLE, ELLINGSON, WYATT, SANDS and PEASE voting no. REPS. TASH and AHNER were absent for the vote and did not leave proxies for amendments.
{Tape: 4; Side: B; Approx. Time Count: 1.7}

Motion: REP. ANDERSON moved to amend SB 382.
{Tape: 4; Side: B; Approx. Time Count: 2.7}

EXHIBIT 9

Discussion:
{Tape: 4; Side: B; Approx. Time Count: 3.2 - 8.8}

Vote: The motion failed by voice vote.
{Tape: 4; Side: B; Approx. Time Count: 8.9}

Motion: REP. HANSON moved SB 382 BE CONCURRED IN AS AMENDED.
{Tape: 4; Side: B; Approx. Time Count: 10.6}

Discussion:
{Tape: 4; Side: B; Approx. Time Count: 10.9}

Motion: REP. HURDLE moved to table SB 382. The motion failed 10 - 10(*see comments below); REPS. AHNER and TASH voted no by proxy (their aye votes to concur signified no votes to table). REPS. BERGMAN and MOLNAR voted aye by proxy (their no votes on the bill reflect aye votes to table.)
{Tape: 4; Side: B; Approx. Time Count: 16.8; Comments: The initial count was 10 - 10, however, during preparation of the minutes, the tally was corrected to 11 - 9. Due to the incorrect tally during the meeting, discussion and amending action continued though ultimately the bill was tabled by roll call vote 11 - 9 as indicated below.}

Discussion:
{Tape: 4; Side: B; Approx. Time Count: 16.6}

Motion: REP. KOTTEL moved to amend SB 382 by deleting section 4.
{Tape: 4; Side: B; Approx. Time Count: 16.7; Comments: REP. AHNER arrived.}

Vote: The motion carried 16 - 3; REPS. MCGEE, BOHARSKI and CLARK voting no. REP. TASH was absent for the vote and his proxy did not include amendments.
{Tape: 4; Side: B; Approx. Time Count: 20.2}

Motion: REP. KOTTEL moved SB 382 BE CONCURRED IN AS AMENDED.
{Tape: 4; Side: B; Approx. Time Count: 20.6}

Discussion:
{Tape: 4; Side: B; Approx. Time Count: 20.8-Tape 5; Side A; 18.9; Comments: Both Ms. O'Halloran and Ms. Rehberg responded to questions without objection from the committee. REPS. MC GEE and BOHARSKI argued the reasons for passing the bill. A statement by REP. HURDLE was ruled out of order. REP. KOTTEL reasoned for delay in passing a bill that would make a major swing in policy.}

Motion/Vote: REP. KOTTEL moved to table SB 382. The motion carried by roll call vote 11 - 9. EXHIBIT 10
{Tape: 5; Side: A; Approx. Time Count: 19.3; Comments: REP. MCGEE asked for a roll call vote.}

EXHIBIT 6
DATE 3/27/97
HB 382

AMENDMENTS
SB382
March 25, 1997

1. Page 3, line 14.
Strike: subsection (1) in its entirety
Renumber: subsequent sections
2. Page 4, line 24 through line 25.
Strike: Subsection D it its entirety
Renumber: subsequent sections

EXHIBIT 7
DATE 3/27/97
SB 382

MONTANA OPPONENTS TO H.R. 1058/S. 240

Anaconda-Deer Lodge County, Treasurer Patty Donahue ✓
Big Horn County, Treasurer Martha E. Fletcher ✓
Blaine County, Treasurer Shirley Grubb, Commission Chairman Keith L. Benson, ✓
and Commissioners Curtis C. Moxley and Arthur Kleinjan ✓
Butte Area Chapter of AARP, President Harold Kammerer ✓
Butte Human Rights Coalition, President/Board Chair George Waring ✓
Carbon County, Commissioner Mona Nutting (MACO resolution) ✓
Cascade County, Commission Chairman Jack T. Whitaker and Commissioners ✓
Roy M. Aafedt and Peggy S. Beltrone ✓
City of Billings, Finance & Administrative Services Director Nathan R. Tubergen ✓
City of Great Falls, Risk Specialist Kelly Orrantia ✓
City of Missoula, Mayor Daniel Kemmis and Finance Officer Ron Mason ✓
City of Missoula, City Council President Douglas Harrison and City Clerk Martha L. Baker ✓
(resolution) ✓
Coalition of Montanans Concerned with Disabilities, President Michael Regnier ✓
Custer County Commission, Chair Janet R. Kelly (Custer resolution) ✓
Daniels County, Treasurer Lorraine Jerome ✓
Dawson County, Treasurer Cindi Byron ✓
Fergus County, Commissioner Vern Petersen (MACO resolution) ✓
Flathead County, Commissioners Howard Gipe (MACO resolution), Sharon Stratton and ✓
Robert Watney ✓
Fort Peck Tribes, Chairman Caleb Shields ✓
Gallatin County, Treasurer Stan Hughes (letter), Commission Chairman Kris Dunn ✓
(letter, resolution and MACO resolution), and Commissioners Jane Jelinski ✓
and Phil Olson (letter and resolution) ✓
Golden Nuggets Chapter, Montana Senior Citizens Association ✓
Golden Valley County Board of Commissioners, Chairman Theodore E. Eklund ✓
Hotel Employees & Restaurant Employees Union, Local 427, Organizer Secky Fascione ✓
Jefferson County, Treasurer Susan M. Miller ✓
Lake County, Treasurer Patricia J. Cook ✓
Madison County, Treasurer Patricia A. Miller ✓
McCone County, Treasurer Janet L. McCabe ✓
Mineral County, Treasurer Billye Ann Bricker ✓
Missoula County Board of Commissioners, Chairman Barbara Evans ✓
Missoula County, Clerk and Recorder/Treasurer Vickie M. Zeier ✓
Montana Association of Counties, Executive Director C. Gordon Morris (resolution) ✓
Montana Coalition For Nursing Home Reform, President Alice Campbell ✓
Montana County Treasurers' Association, President Carol J. Rice (resolution) ✓
Montana Federation of Teachers, President Jim McGarvey ✓
Montana People's Action, Executive Director Jim Fleischman ✓
Montana Public Interest Research Group, Executive Directors Linda Lee ✓
and Chris Newbold ✓

Montana Senior Citizens Association, Executive Director Edmund J. Caplis ✓
and Board Member Doug Campbell
Montana State AFL-CIO, Executive Secretary Donald R. Judge
Montana State Attorney General Joseph P. Mazurek ✓
Montana State Auditor Mark O'Keefe ✓
Montana State Representative Bill Carey
Montana State Representative Jon Ellingson
Montana State Representative Mike Kadas
Montana State Senator Fred Van Valkenburg
Montana State Senate Minority Leader Mike Halligan
Montana Trial Lawyers, Executive Director Russell Hill
Musselshell County, Treasurer Mary C. Nelson ✓
Phillips County, Treasurer Jean Mavencamp ✓
Richland County, Treasurer Donette A. Dopp ✓
Roosevelt County Board of Commissioners, Commissioner Dorothy A. Cody ✓
Rosebud County, Treasurer Sharon Lincoln ✓
Stillwater County, Commission Chairman Vicki Hyatt (MACO resolution) ✓
Toole County, Treasurer Judith J. Nevins ✓
Town of Superior, Town Clerk/Treasurer Brenda L. Schneider ✓
Yellowstone County, Commissioner Mike Mathew (MACO resolution) ✓
Yellowstone County, Treasurer Cindy L. Sellers ✓

The Big Fork Eagle commentary opposing H.R. 1058/S. 240 (September 6, 1995)
The Billings Gazette commentary opposing H.R. 1058/S. 240 (June 6, 1995)
The Hungry Horse News commentary opposing H.R. 1058/S. 240 (August 31, 1995)
The Whitefish Pilot commentary opposing H.R. 1058/S. 240 (September 7, 1995)

EXHIBIT 8
DATE 3/27/97
HB 382

AMENDMENTS
SB382
March 25, 1997

3. Page 8, line 10.
Following: "part"
Insert: "in which the plaintiff alleges that the defendant made an untrue statement or omitted a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading,"
Following: "if"
Insert: "the person who offered or sold the security proves"

AMENDMENTS
SB382
March 25, 1997

EXHIBIT 9
DATE 3/27/97
HB 382

4. Page 14.
Following: line 15
Insert: **Section 12. Applicability.** [Sections 1 through xx]
do not apply to any private action arising under this
chapter commenced before and pending on the date of
enactment of this Act; provided, however, that any legal
precedents embodied in this act may be applied by the courts
notwithstanding this section.

HOUSE OF REPRESENTATIVES

EXHIBIT 10
DATE 3/27/97
HB 382

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3/27/97 BILL NO. 382 NUMBER #2MOTION: Table @ 12:30 PM

NAME	AYE	NO
REP. BOB CLARK, CHAIRMAN		✓
REP. DANIEL MC GEE, VICE CHAIR		✓
REP. DIANA WYATT, VICE CHAIR	✓	
REP. CHRIS AHNER		✓
REP. SHIELL ANDERSON		✓
REP. ELLEN BERGMAN	✓	
REP. WILLIAM BOHARSKI		✓
REP. AUBYN CURTISS	✓	
REP. JON ELLINGSON	✓	
REP. DUANE GRIMES		✓
REP. H. S. "SONNY" HANSON		✓
REP. JOAN HURDLE	✓	
REP. DEB KOTTEL	✓	
REP. LINDA MC CULLOUCH	✓	
REP. BRAD MOLNAR	✓	
REP. GERALD PEASE	✓	
REP. DIANE SANDS	✓	
REP. LIZ SMITH		✓
REP. LOREN SOFT	✓	
REP. BILL TASH		✓

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3/27/97

8:30 AM

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	nam ✓	✓	
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	8:40 ✓		
REP. H.S. "SONNY" HANSON	10:00 ✓		✓
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		